

CHAPTER 27

TAXATION

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ARTICLE I. GENERAL PROVISIONS

SECTION 27-1. DEFINITIONS.

The following words and phrases, when used in this chapter, shall have the following respective meanings, except where the context clearly indicates a different or contrary meaning or there is an express provision to the contrary:

- (a) *COMMISSIONER*. The term Commissioner shall mean the Commissioner of the Revenue of the City of Winchester, Virginia.
- (b) *TREASURER*. The term Treasurer shall mean the Treasurer of the City of Winchester, Virginia. (Ord. No. 017-92, 11-10-92)

SECTION 27-2. PENALTIES; FAILURE TO PAY, FAILURE TO FILE.

- (a) Unless otherwise stated, the penalty for failure to pay any tax or installment under this chapter shall be ten percent (10%) of the tax past due or the sum of two dollars (\$2.00), whichever is greater and shall be assessed on the day after the

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first installment is due. Provided, however, that in no case shall the penalty exceed the amount of the tax assessable.

- (b) Unless otherwise stated, the penalty for failure to file any application or return required under this chapter shall be ten percent (10%) of the tax assessable on such return or two dollars (\$2.00), whichever is greater, and shall be assessed on the day after such return or application is due. Provided, however, that in no case shall the penalty exceed the amount of the tax assessable.
- (c) Any penalty, when so assessed, shall become a part of the tax due.
- (d) The assessment of any penalty shall not be deemed a defense to any criminal prosecution for failing to make return of taxable property as may be required by law or ordinance.
- (e) Penalty for failure to file a return or to pay a tax shall not be imposed if such failure was not of the fault of the taxpayer, or was the fault of the commissioner or the treasurer. Failure to file a return or to pay a tax due to a medically determinable physical or mental impairment on the date the return or tax is due shall be presumptive proof of lack of fault on the taxpayer's part, provided the return is filed or the taxes are paid within thirty days (30) of the due date; however, this provision shall not apply if there is a committee, legal guardian or other fiduciary handling the individual's affairs. (Ord. No. 017-92, 11-10-92; Ord. No. 009-95, 03-14-95)

State Law Reference-- Code of Virginia, §58.1-3916.

SECTION 27-3. INTEREST.

Interest shall commence the first day following the day any taxes under this chapter are due to be filed or paid, at the rate of ten percent (10%) per annum. (Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3916.

SECTION 27-4. CRIMINAL PENALTIES.

Failure or refusal to file any return required under this chapter at the time or times required therein or for making false statements with intent to defraud in such returns shall constitute: (a) A Class 3 misdemeanor if the amount of the tax lawfully assessed in connection with the return is one thousand dollars (\$1,000.00) or less, or (b) A Class 1 misdemeanor if the amount of the tax lawfully assessed in connection with the return is more than one thousand dollars (\$1,000.00). (Ord. No. 017-92, 11-10-92)

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State Law Reference-- Code of Virginia, §58.1-3916.1.

SECTION 27-5. MANNER OF CREDITING PAYMENT.

The may credit any payment of local assessment herein prescribed, other than the assessment for real estate taxes, to the tax levy or levies designated by the taxpayer; however, any such payment shall be first credited to penalties, interest and the principal of the longest overdue tax bill within the levy, as provided by Section 58.1-3913 of the Code of Virginia. (Ord. No. 012-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-6. FAILURE TO PAY TAX; PENALTY AND INTEREST.

- (a) As to all real estate taxes and tangible personal property taxes assessed for the tax year 1976 and tax years prior thereto, any person who shall have failed to pay to the said tax before December 5th of said year shall be assessed a penalty of five percent (5%) per annum of the amount of such unpaid tax.
- (b) As to all real estate taxes assessed for the tax year 1977 and tax years subsequent thereto, any person who shall fail to pay to the on or before June 5th and December 5th of each year the semiannual installment of real estate taxes becoming due on or before such dates respectively, as provided for by Sections 27-10 of this ordinance, and any person who shall fail to pay to the treasurer on or before December 5th of each year the whole of tangible personal property tax imposed by Section 27-40 and/or Section 27-50 of this ordinance for such year shall be assessed by the treasurer and shall pay, along with such tax, a penalty of ten percent (10%) per annum of the amount of such unpaid installment on tax or taxes, as the case may be.
- (c) As to all real estate and/or personal property taxes remaining unpaid on April 1st of the year following the year of the levies of 1974, 1975 and 1976, there shall be added thereto interest at the rate of one percent (1%) of the unpaid amount of the tax, and there shall be an additional one percent (1%) of the unpaid amount of the tax added on the first of each succeeding month until paid.
- (d) On and after July 1, 1977, real estate tax levies due without penalty on June 5, 1977 and all succeeding years through June 5, 1985, as provided by Section 27-121.1 of this ordinance which remain unpaid at June 30, 1977 and all succeeding years through June 30, 1985 shall have added thereto interest at the rate of eight percent (8%) per annum of the unpaid amount of the tax due until December 31, 1985, and thereafter at the rate of ten percent (10%) per annum of the unpaid amount of the tax until paid.
- (e) On and after January 1, 1978, real estate and personal property tax levies due without penalty on December 5, 1977 and all succeeding years through December

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5, 1985 which remain unpaid at January 1, 1978 and all succeeding years through December 31, 1985 shall have added thereto interest at the rate of ten percent (10%) per annum of the unpaid amount of the tax until paid.

- (f) On and after July 1, 1986, real estate tax levies assessed by Sections 27-10 of this ordinance and due without penalty on June 5, 1986 shall on June 30, 1986 and each year thereafter as long as same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.
- (g) On and after January 1, 1986, real estate tax levies assessed by Sections 27-10 and 27-142 of this ordinance and due without penalty on December 5, 1986 shall have on January 1, 1987 and each year thereafter as long as same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.
- (h) On and after January 1, 1986, personal property and/or machinery and tools taxes respectively imposed by Section 27-40 and Section 27-50 of this ordinance and due without penalty on December 5, 1986 shall on January 1, 1987 and each year thereafter as long as same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.
- (i) On and after July 1, 1987, real estate tax levies assessed and due without penalty on June 5, 1987 shall on June 30, 1987 and each year thereafter as long as the same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.
- (j) On and after January 1, 1987, real estate tax levies assessed and due without penalty on December 5, 1987 shall on January 1, 1987 and each year thereafter as long as the same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.
- (k) On and after January 1, 1987, personal property and/or machinery and tools taxes respectively imposed by Section 27-40 and Section 27-50 of this ordinance and due without penalty on December 5, 1987 shall on January 1, 1988 and each year thereafter as long as same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.
- (l) On and after July 1, 1988, real estate tax levies assessed and due without penalty on June 5, 1988 shall on June 30, 1988 and each year thereafter as long as the same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.
- (m) On and after January 1, 1988, real estate tax levies assessed and due without penalty on December 5, 1988 shall on January 1, 1988 and each year thereafter as long as the same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.

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- (n) On and after January 1, 1988, personal property and/or machinery and tools taxes respectively imposed by Section 27-40 and Section 27-50 of this ordinance and due without penalty on December 5, 1988 shall on January 1, 1989 and each year thereafter as long as same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.
- (o) On and after July 1, 1989, real estate tax levies assessed and due without penalty on June 5, 1989 shall on June 30, 1989 and each year thereafter as long as the same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.
- (p) On and after January 1, 1989, real estate tax levies assessed and due without penalty on December 5, 1989 shall on January 1, 1990 and each year thereafter as long as the same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.
- (q) On and after January 1, 1989, personal property and/or machinery and tools taxes respectively imposed by Sections 27-40 and 27-50 of this ordinance and due without penalty on December 5, 1989 shall on January 1, 1990 and each year thereafter as long as same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum. (Ord. No. 012-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-7. POWER TO SUMMON TAXPAYERS AND OTHER PERSONS; PENALTIES.

- (a) The commissioner may, for the purpose of assessing all taxes assessable by his office, summon the taxpayer or any other person to appear before him at his office, to answer, under oath, questions touching the tax liability of any and all specifically identified taxpayers. The commissioner shall not, however, summon a taxpayer or other person for the tax liability of the taxpayer which is the subject of litigation.
- (b) Any person who refuses to (i) furnish to the commissioner access to books of account or other papers and records, (ii) furnish information to the commissioner relating to the assessment of taxes, (iii) answer under oath questions touching any person's tax liability, or (iv) exhibit to the commissioner any subject of taxation liable to assessment by the commissioner, shall be deemed guilty of a Class 3

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misdemeanor. Each day's refusal to furnish such access or information shall constitute a separate offense. (Ord. No. 017-92, 11-10-92)

State Law References--Code of Virginia, §§58.1-3110, 58.1-3111.

SECTION 27-8. REFUNDS OF ERRONEOUSLY ASSESSED TAXES. (EFFECTIVE FEBRUARY 10, 1993)

Local taxes, including business license taxes pursuant to Chapter 28, which have been erroneously paid shall be refunded to the taxpayer. In order for a refund to be made, the commissioner must first be satisfied that he has erroneously assessed the taxpayer with a local tax.

If the commissioner is satisfied of such erroneous assessment, he shall certify same to the treasurer. Upon a determination by the treasurer that the tax has been paid, he shall refund to the taxpayer the amount erroneously paid, together with and penalties and interest paid thereon.

No refund shall be made if application therefor is made more than three years after the last day of the tax year for which the taxes were assessed.

SECTION 27-9. PAYMENT OF ADMINISTRATIVE COSTS, ETC.

- (a) There is hereby imposed upon each person chargeable with delinquent taxes or other delinquent charges, fees to cover the administrative costs and reasonable attorney's or collection agency's fees actually contracted for. These fees shall be in addition to all other applicable penalties and interest and shall not exceed the maximum amount permitted under Section 58.1-3958 of the Code of Virginia, 1950, as amended.
- (b) If the collection activity is to collect on a nuisance abatement lien, the fee for administrative costs shall be one hundred fifty dollars (\$150.00) or twenty-five percent (25%) of the cost, whichever is less; however, in no event shall the fee be less than twenty-five dollars (\$25.00).
- (c) No tax assessment or tax bill shall be deemed delinquent and subject to the collection procedures prescribed herein during the pendency of any administrative appeal under Section 58.1-3980, so long as the appeal is filed within ninety (90) days of the date of the assessment, and for thirty (30) days after the date of the final determination of the appeal, provided that nothing in this paragraph shall be construed to preclude the assessment or refund, following the final determination of such appeal, of such interest as otherwise may be provided by general law as to

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that portion of a tax bill that has remained unpaid or was overpaid during the pendency of such appeal and is determined in such appeal to be property due and owing.

(Ord. No. 030-2004, 8-10-04)

ARTICLE II. REAL PROPERTY TAX.

DIVISION 1. IMPOSITION OF TAX

SECTION 27-10. LAND, LOTS, AND BUILDINGS.

On all tracts of land, lots, and improvements thereon not exempt from taxation there shall be a tax of sixty-nine cents (\$0.69) for every one hundred dollars (\$100.00) of the assessed value thereof for general city and school purposes. All City taxes on real estate for each year shall be due and payable during the year for which the same are assessed in two approximately equal installments as follows:

- One-half on or before June fifth; and
- One-half on or before December fifth.

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All taxes annually imposed on real estate shall be payable by the persons who on the first day of January in each and every year are the respective owners of record thereof.

(Ord. No. 044-88, 11-15-88; Ord. No. 011-91, 4-23-91; Ord. No. 017-92, 11-10-92; Ord. No. 015-93, 05-06-93; Ord. No. 017-94, 05-10-94; Ord. No. 010-96, 05-14-96; Ord. No. 006-99, 3-30-99; Ord. No. 007-2000, 04-11-00; Ord. No. 011-2001, 04-10-01; Ord. No. 012-2003, 4-22-03; Ord. No. 027-2003, 07-22-03; Ord. No. 013-2004, 4-28-04; Ord. No. 010-2005, 04-12-05)

State Law References--Code of Virginia, §§58.1-3200; 58.1-3916; 15.1-160; City Charter §5.01 (1994).

SECTION 27-11. ASSESSMENT OF NEW BUILDINGS SUBSTANTIALLY COMPLETED, ETC.; EXTENSION OF TIME FOR PAYING ASSESSMENT.

All new buildings substantially completed or fit for use and occupancy prior to November 1 of the year of completion shall be assessed when so completed or fit for use and occupancy. The commissioner shall enter in the books the fair market value of such building. No partial assessment as provided herein shall become effective until information as to the date and amount of such assessment is recorded in the office of the treasurer and made available for public inspection. The total tax on any such new building for that year shall be the sum of (i) the tax upon the assessment of the completed building, computed according to the ratio which the portion of the year such building is substantially completed or fit for use and occupancy bears to the entire year, and (ii) the tax upon the assessment of such new building as it existed on January 1 of that assessment year, computed according to the ratio which the portion of the year such building was not substantially complete or fit for use and occupancy bears to the entire year. With respect to any assessment made under this section after September 1 of any year, the penalty for nonpayment by December 5 shall be extended to February 5 of the succeeding year. (Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3292.

DIVISION 2. SPECIAL USE VALUATION.

SECTION 27-12. EXCEPTION: AGRICULTURAL AND HORTICULTURAL LAND.

The City finds that the preservation of real estate devoted to agricultural and horticultural uses within the City is in the public interest and, having heretofore adopted a Land Use Plan, hereby ordains that such real estate shall be taxed in accordance with the provisions of this chapter and Article 4 of Chapter 32 of Title 58.1 of the Code of Virginia. (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)

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SECTION 27-13. APPLICATION FOR SPECIAL USE TAXATION.

- (a) The owner of any real estate meeting the criteria set forth in §§58.1-3230 of the Code of Virginia, and 58.1-3233(2)(i) of the Code of Virginia, for agricultural or horticultural use may, on or before November 1 of each year, apply to the commissioner for the classification, assessment and taxation of such property for the next succeeding tax year on the basis of its use under the procedures set forth in s 58.1-3236 of the Code of Virginia. Such application shall be on forms provided by the State Department of Taxation and supplied by the commissioner, and shall include such additional schedules, photographs and drawings as may be required by the commissioner.
- (b) A separate application shall be filed for each use for which qualification is sought. Upon payment of a late filing fee of fifteen dollars (\$15.00), such an application may be filed with the commissioner not more than sixty days after November 1. (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)

SECTION 27-14. DETERMINATION OF PROPERTY VALUE.

Promptly upon receipt of any application, the commissioner, with the assistance of the city assessor, shall determine whether the subject property meets the criteria for taxation hereunder. If the commissioner determines that the subject property does meet such criteria, he shall determine the value of such property for its qualifying use as well as its fair market value.

In determining whether the subject property meets the criteria for taxation hereunder, the commissioner may request an opinion from the Director of the Department of Conservation and Historic Resources or the commissioner of Agriculture and Consumer Services. Upon the refusal of the Director of the Department of Conservation and Historic Resources or the commissioner of Agricultural and Consumer Services to issue an opinion, or in the event of an unfavorable opinion which does not comport with standards set forth by the respective Director or commissioner, the party aggrieved may seek relief from any court of record wherein the real estate in question is located. If the court finds in his favor, it may issue an order which shall serve in lieu of an opinion for the purposes of this chapter. (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3240.

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SECTION 27-15. ROLL-BACK TAX.

There is hereby imposed a roll-back tax in such amount as may be determined under §58.1-3237 of the Code of Virginia, including interest at a rate of five-sixths of one percent per month or fraction thereof, upon any property of which the use changes to a non-qualifying use. (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3237.

SECTION 27-16. PAYMENT OF ROLL-BACK TAX; MISSTATEMENTS OF FACT; PENALTY FOR DELINQUENCY.

- (a) The owner of any real estate liable for roll-back taxes shall report to the commissioner on forms to be prescribed, any change in the use of such property to a non-qualifying use and shall pay the roll-back tax then due. If such owner fails to so report and pay within sixty days following such change in use, such owner shall be liable for an additional penalty equal to ten percent of the amount of the roll-back tax, which penalty shall be collected as a part of the tax. In addition to such penalty, there is hereby imposed interest of five-sixths of one percent of the amount of the roll-back tax for each month or fraction thereof during which the failure continues.
- (b) Any person making a material misstatement of fact in any application filed pursuant hereto shall be liable for all taxes, in such amounts and at such times as if such property had been assessed on the basis of fair market value as applied to other real estate in the taxing jurisdiction, together with interest and penalties thereon, and he shall be further assessed with an additional penalty of 100 percent of such unpaid taxes. (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)

SECTION 27-17. APPLICATION OF STATE LAW.

The provisions of Title 58.1 of the Code of Virginia, applicable to local levies and real estate assessment and taxation shall be applicable to assessments and taxation hereunder *mutatis mutandis* including, without limitation, provisions relating to tax liens and the correction of erroneous assessments. For such purposes, the roll-back taxes shall be considered to be deferred real estate taxes. (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)

SECTION 27-18. APPLICATION FEE; RENEWALS.

All applications under this article shall be accompanied by an application fee payable to the treasurer of thirty dollars (\$30.00) or thirty cents (\$.30) per acre per parcel or major part thereof for each acre sought to be classified, assessed or taxed under this chapter,

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whichever is greater. All such applications shall be renewed annually in accordance with the filing deadline stipulated in Section 27-13. Every sixth year from the date of the original application, such annual renewal shall be accompanied by a revalidation fee of thirty dollars or thirty cents (\$.30) per acre per parcel. An annual renewal may be filed up to sixty days after the filing deadline stipulated above upon payment of a late filing fee of fifteen dollars (\$15.00). (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3234.

DIVISION 3. EXEMPTION FOR ELDERLY AND DISABLED.

SECTION 27-19. GENERAL PROVISIONS.

- (a) The commissioner shall, upon application made upon the terms hereinafter provided, order exemption of tax on real property owned and occupied as the sole dwelling house of a person or persons either (i) at least sixty-five (65) years of age as of December 31st of the year preceding the year applied for; or (ii) permanently and totally disabled as defined in §58.1-3217 of the Code of Virginia, such exemption to be granted only upon the restrictions and conditions hereinafter established.
- (b) Subject to subdivision (c) of this section, the total combined income received from all sources during the preceding calendar year by: (i) owners of the dwelling who use it as their principal residence and (ii) owners' relatives who live in the dwelling, shall not exceed Fifty Thousand Dollars (\$50,000.00). Six Thousand Five Hundred Dollars (\$6,500.00) of income of each relative who is not the spouse of an owner living in the dwelling and who does not qualify for the exemption provided by subdivision (c) hereof is excluded from the total combined income calculation. (Ord. No. 017-2004, 4-28-04)
- (c) Notwithstanding subdivision (b) of this section, if a person qualifies for an exemption or deferral under this article, and if the person can prove by clear and convincing evidence that after so qualifying the person's physical or mental health has deteriorated to the point that the only alternative to permanently residing in a hospital, nursing home, convalescent home or other facility for physical or mental care is to have a relative move in and provide care for the person, and if a relative does then move in for that purpose, then none of the relative's income shall be counted towards the income limit provided that the owner of the residence has not transferred to the relative assets in excess of Five Thousand Dollars (\$5,000.00) without adequate consideration within a three-year period prior to or after the relative moves into the residence. (Ord. No. 027-93, 10-12-93)

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- (d) The net combined financial worth, including the present value of all equitable interests, as of December 31 of the immediately preceding calendar year, of the owners, and of the spouse of any owner, excluding the value of the dwelling, furnishings, and the land, not exceeding one acre, upon which it is situated shall not exceed the following amounts effective on the stated dates:

Effective January 1, 2006	\$150,000
Effective January 1, 2007 and thereafter	\$200,000

Such furnishings shall include furniture, household appliances and other items typically used in a home.

(Note: The effective date of this Ordinance shall be January 1, 2006)

(Ords. of 1-14-75, 4-13-76, 12-14-76; Ord. Nos. 017-80, 10-14-80; 011-82, 7-13-82; 004-84, 3-14-84; 003-88, 1-12-88; 018-91, 4-23-91; 044-91, 11-12-91; Ord. No. 017-92, 11-10-92; Ord. No. 046-2001, 12-11-01-effective 1-1-02; Ord. No. 017-2004, 4-28-04; Ord. No. 015-2005, 5-10-05)

State Law References--Code of Virginia, §58.1-3210, §58.1-3211, §58.1-3212.

SECTION 27-20. ANNUAL APPLICATION AND AFFIDAVIT.

- (a) The person claiming such exemption shall file annually with the commissioner on forms supplied by the City, an affidavit setting forth (i) the names of the related persons occupying such real estate and (ii) that the total combined net worth, including equitable interests and the combined income from all sources, of the persons specified in Section 27-19 do not exceed the limits prescribed in that section.
- (b) If such person is under sixty-five years of age such form shall have attached thereto a certification by the Social Security Administration, the Department of Veterans Affairs or the Railroad Retirement Board, or if such person is not eligible for certification by any of these agencies, a sworn affidavit by two medical doctors who are either licensed to practice medicine in the Commonwealth or are military officers on active duty who practice medicine with the United States Armed Forces, to the effect that the person is permanently and totally disabled, as defined in Virginia Code §58.1-317; however, a certification pursuant to 42 U.S.C. 423 (d) by the Social Security Administration so long as the person remains eligible for such social security benefits shall be deemed to satisfy such definition in Virginia Code Ann. §58.1-3217. The affidavit of at least one of the doctors shall be based upon a physical examination of the person by such doctor. The affidavit of one of the doctors may be based upon medical information contained in the records of the Civil Service Commission which is relevant to the standards for determining permanent and total disability as defined in Code of Virginia, §58.1-3217.

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- (c) Such application with affidavit shall be filed no later than the first day of April of each year, except that the commissioner shall accept later filings from owners otherwise meeting the provisions of this section who are unable to file by the first day of April due to personal or family illness or other ascertainable hardships, and from owners eligible to file for the first time. Any false statements made in connection with the filing of an application under this section shall constitute a misdemeanor, punishable by a fine not exceeding one hundred dollars (\$100.00). (Ord. No. 044-88, 11-15-88; Ord. No. 044-91, 11-12-91; Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3213.F.

SECTION 27-21. INQUIRIES BY THE COMMISSIONER.

The commissioner shall make further inquiry of persons seeking such exemption as may be reasonably necessary in determining the qualifications therefor. The commissioner may require production of certified tax returns to establish the financial worth or income of any applicant. Such further inquiries shall be answered under oath. (Ord. No. 044-88, 11-15-88; Ord. No. 044-91, 11-12-91; Ord. No. 017-92, 11-10-92)

State Law Reference--Code of Virginia, §58.1-3213.

SECTION 27-22. NOTICE OF LOCAL REAL ESTATE TAX EXEMPTION OR DEFERRAL PROGRAM FOR THE ELDERLY AND DISABLED.

The treasurer shall enclose written notice, in each real estate tax bill, of the terms and conditions of the real estate tax exemption program established in this article. The treasurer shall also employ any other reasonable means necessary to notify residents of the City about the terms and conditions of the real estate tax exemption program for elderly and disabled residents of the City. (Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3213.1.

SECTION 27-23. AMOUNT OF EXEMPTION.

For eligible claimants, the amount of exemption from real estate tax for any taxable year shall be as follows:

Beginning January 1, 2006, the following shall apply:

<u>Income Level</u>	<u>Exemption</u>
\$ 0 - \$25,000	100%
\$25,001 - \$30,000	80%
\$30,001 - \$35,000	60%
\$35,001 - \$40,000	40%

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\$40,001 - \$50,000	20%
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Beginning January 1, 2007, and thereafter, the following shall apply:

<u>Income Level</u>	<u>Exemption</u>
\$ 0 - \$30,000	100%
\$30,001 - \$35,000	75%
\$35,001 - \$40,000	50%
\$40,001 - \$50,000	25%

(Note: The effective date of this Ordinance shall be January 1, 2006)

(Ords. of 1-14-75, 4-13-76, 12-14-76; Ord. No. 018-80, 10-14-80; Ord. No. 011-82, 7-13-82; Ord. No. 004-84, 3-14-84; Ord. No. 003-88, 12-12-88; Ord. No. 018-91, 4-23-91; Ord. No. 044-91, 11-12-91; Ord. No. 017-92, 11-10-92; Ord. No. 046-2001, 12-11-01-effective 1-1-02; Ord. No. 017-2004, 4-28-04; Ord. No. 015-2005, 5-10-05)

State Law Reference-- Code of Virginia, §58.1-3210.

SECTION 27-24. EXEMPTION CERTIFICATE, WARRANT OR DRAFT.

An exemption certificate, warrant or draft shall be in the amount of the exemption and mailed with the real property tax bill. The tax bill shall be in the full amount of the taxes before any exemption. The certificate, warrant or draft shall expire at 5:00 P.M. on the last day to pay such taxes without penalty. (Ord. No. 044-88, 11-15-88; Ord. No. 044-91, 11-12-91; Ord. No. 017-92, 11-10-92)

SECTION 27-25. PROCEDURES.

The commissioner shall indicate on the land books of the City of Winchester the amount of tax exempted pursuant to the provisions of this article. He shall adopt and promulgate rules and regulations not inconsistent with the provisions of this article, as deemed necessary for the effective administration of this article. (Ord. No. 044-88, 11-15-88; Ord. No. 004-91, 11-12-91; Ord. No. 017-92, 11-10-92)

SECTION 27-26. ABSENCE FROM RESIDENCE.

The fact that persons who are otherwise qualified for tax exemption by this article are residing in hospitals, nursing homes, convalescent homes or other facilities for physical or mental care for extended periods of time shall not be construed to mean that the real estate for which tax exemption is sought does not continue to be the sole dwelling of such persons during such extended periods of other residence so long as such real estate is not used by or leased to others for consideration. (Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3214

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SECTION 27-27. CHANGE IN CIRCUMSTANCES.

- (a) Changes in income, financial worth, ownership of property or other factors occurring during the taxable year for which an affidavit is filed and having the effect of exceeding or violating the limitations and conditions provided herein shall nullify any exemption for the remainder of the current taxable year and the taxable year immediately following.
- (b) A change in ownership to a spouse, when such change resulted solely from the death of the qualifying individual, or a sale of such property shall result in a prorated exemption for the then current taxable year. The proceeds of the sale which would result in the prorated exemption shall not be included in the computation of net worth or income as provided in subsection (a). Such prorated portion shall be determined by multiplying the amount of the exemption or deferral by a fraction with the number of complete months of the year such property was properly eligible for such exemption or deferral as the numerator and the number twelve as the denominator. (Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3215.

DIVISION 4. SUBSTANTIALLY REHABILITATED PROPERTY.

SECTION 27-28. DEFINITIONS.

For the purpose of this division, the following words and phrases shall have the meanings, respectively ascribed to them:

- (a) **SUBSTANTIALLY REHABILITATED RESIDENTIAL REAL ESTATE**, shall mean any residential real estate within the Historic Winchester District (HW), as defined by Article 14 of the Zoning Ordinance of the City of Winchester, 1976, as amended, upon which there is an existing structure which is no less than twenty-five (25) years old, and which has been so improved as to increase the assessed value thereof by no less than forty percent (40%), without increasing the total square footage by more than fifteen percent (15%).
- (b) **SUBSTANTIALLY REHABILITATED COMMERCIAL OR INDUSTRIAL REAL ESTATE**, shall mean any commercial or industrial real estate within the Historic Winchester District (HW), as defined by Article 14 of the Zoning Ordinance of the City of Winchester, 1976, as amended, upon which there is an existing structure which is no less than twenty-five (25) years old, and which has been so improved as to increase the assessed value thereof by no less than sixty percent (60%), without increasing the total square footage by more than fifteen percent (15%).
- (c) **AMOUNT OF EXEMPTION**, shall mean an amount equal to the increase in assessed value resulting from the rehabilitation of the structure as determined by

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the assessing officer, and this amount only shall be applicable to assessment commencing on the first day of January of the year following the rehabilitation. An increase in assessment occurring after the first year of such rehabilitation exemption shall not result in an increase in such exemption.

- (d) **TAXABLE YEAR**, shall mean the calendar year from January first through December thirty-first for which such real property tax is imposed or exemption claimed. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-29. EXEMPTIONS DECLARED.

The purpose of this division shall be to provide real estate tax exemptions for substantially rehabilitated residential, commercial, or industrial real estate for a period of ten (10) years, commencing on January first of the year following completion of such rehabilitation; provided, however, that no property owner may apply for exemption on the basis of a building permit issued prior to January 1, 1984. Owners of property on which such improvements were completed prior to January 1, 1984 shall not be eligible for the exemption herein prescribed, and further shall not be eligible for refund or adjustment of taxes payable prior to January 1, 1984. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §§58.1-3220, *et seq.*

SECTION 27-30. ELIGIBILITY REQUIREMENTS.

Exemptions pursuant to this division shall not become effective unless the persons owning such property have:

- (a) Obtained the required building permit and applied for the herein prescribed exemption on a form approved by the city assessor. Application for exemption must be filed before the work designated by the building permit is begun.
- (b) Submitted the application for exemption prior to January first of the taxable year for which such exemption is claimed;
- (c) Paid to the treasurer an application processing fee in the amount of twenty dollars (\$20.00). No application for the exemption approved by this article shall be deemed to have been filed until the fee herein imposed has been paid. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTIONS 27-31 - 27-39. RESERVED.

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ARTICLE III. PERSONAL PROPERTY TAX

SECTION 27-40. TANGIBLE PERSONAL PROPERTY.

- (a) Upon all personal property as defined in Section 58.1-3500 of the Code of Virginia, as amended, except those categories of personal property which are listed in Section 58.1-3503.A.1,2,13 and 14, and not exempt from taxation there shall be a tax of four dollars and fifty cents (\$4.50) for every one hundred dollars (\$100.00) of the assessed value thereof for general city and school purposes.

(i) All City taxes on personal property for each year shall be due and payable during the year for which same are assessed as follows:

(A) -Personal property not listed in subsection (b) - total amount in one installment on or before December fifth.

(B) -Personal property listed in subsection (b) - total amount in one installment on the last day of the twelfth month after such personal property has acquired situs within the City.

This Ordinance shall take effect on 1 January 2005.

All taxes annually imposed on personal property except as set out in subsections b and c, below, shall be payable by the persons who on the first day of January in each and every year are the owners of record thereof. (Ord. No. 047-2004, 12-14-04)

- (b) The personal property tax on motor vehicles, and trailers, hereinafter, taxable property or property, shall be assessed against such taxable property which acquires a situs within the City on January first of each year or which acquires a situs within the City on or after January the second of each year. When taxable property acquires a situs within the City on or after January second, the personal property tax for that year shall be assessed to the owner prorated on a monthly basis for the portion of the tax year during which the taxable property has situs within the City. When taxable property with a situs in the City is transferred to a new owner within the City, the personal property tax shall be assessed to the new owner prorated on a monthly basis for the portion of the tax year during which the new owner owns the taxable property. For purposes of proration, a period of more than one-half of a month shall be counted as a full month and a period of less than one-half of a month shall not be counted. All taxable property shall be assessed as of January first of each year or, if it acquires situs or has its title transferred after January first, as of the first day of the month in which the taxable property acquires situs within the City or has its title transferred. The owner of taxable property acquiring situs within the City or to whom taxable property is transferred shall file a declaration of property ownership to the commissioner

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within forty-five (45) days of the date on which such property acquires a situs within the City or has its title transferred to such owner. (Ord. No. 042-2004, 10-12-04)

- (c) When any taxable property loses its situs within the City or its title is transferred to a new owner, the taxpayer shall from that time be relieved from personal property tax on such taxable property and receive a refund of personal property tax already paid, or a credit toward taxable property newly transferred to the taxpayer, or a credit against personal property taxes outstanding against the taxpayer, at the option of the commissioner, on a monthly prorated basis, upon application to the commissioner, provided that application is made within three (3) years from the last day of the tax year during which the taxable property lost situs or had its title transferred. The commissioner shall make a reasonable effort to ascertain and notify any taxpayer entitled to a prorated refund of personal property taxes pursuant to this subsection. The treasurer shall stamp or have printed, on the application for a duplicate City decal for new or substitute vehicles, notification to the applicant that he may be entitled to a prorated refund of personal property taxes assessed against any vehicle which he sold or transferred to a new owner. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 038-93, 11-09-93)
- (d)
 - (i) Provided a previous personal property return for a motor vehicle or trailer not used or employed in a trade or business has been filed by the owner or owners of such property and there has been no change in name or address of the owner or owners nor has the motor vehicle had a change in status or situs since the previous filing, no tangible personal property tax return need be filed for succeeding years.
 - (ii) However, the owner of a motor vehicle or trailer not used or employed in a trade or business shall file a new tangible personal property tax return within forty-five (45) days after occurrence of any of the following events:
 - (A) a change in the name or address of the person or persons owning such motor vehicle or trailer taxable by the City;
 - (B) a change in the situs of such motor vehicle or trailer;
 - (C) any other change affecting the assessment or levy of the personal property tax on such motor vehicle or trailer for which a tax return was previously filed; or
 - (D) any change in which a person acquires one (1) or more such motor vehicles or trailers and for which no personal property tax return has been filed. (Ord. No. 009-97, 4-8-97; Ord. No. 042-2004, 10-12-04)

State Law References--Code of Virginia, §§58.1-3500, *et seq.*, 58.1-3516, 58.1-3518.1.

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Note: Ordinance No. 009-97 effective June 1, 1997.

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SECTION 27-41. APPLICABILITY; DUTY OF COMMISSIONER; APPEAL.

Each person, firm, and corporation engaged in business in the City, having an office in the City, or residing in the City shall file a return of his personal property for taxation to the commissioner in accordance with forms supplied by said commissioner or the Department of Taxation, Commonwealth of Virginia. The return for prorated personal property shall be filed by 31 January of each year, except that in 1993, the return may be filed not later than 1 May. Each return for non-prorated personal property shall be filed by 1 May of each year.

Returns will not be accepted by the commissioner unless same are completed in accordance with the forms provided the taxpayers. It shall be the duty of the commissioner to make such investigation as may be necessary to determine that returns are full and complete and, if necessary, to revise owner's appraisal of the original cost of the property to be assessed. Said original cost shall determine the total assessment.

The property owner, if dissatisfied with the determination of the commissioner, shall pay the assessment made but shall have the right to appeal to the Common Council for a revised assessment. If such assessment is revised by the Common Council to a lower figure, the property owner shall be entitled to a refund of the over assessment so determined. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-42. MANUFACTURED HOMES.

- (a) A tax is hereby imposed on manufactured homes, as hereinafter defined as a separate class of tangible personal property, at the same rate as that stated in Section 27-10 of this Code.
- (b) "Manufactured homes", as the term is used herein, are defined as vehicles without motive power, used or designed to be used as manufactured homes, as more specifically defined by Section 36-85.3 of the Code of Virginia, 1950, as amended. (Ord. No. 017-92, 11-10-92; Ord. No. 030-93, 10-12-93; Ord. No. 031-99, 11-9-99; Ord. No. 008-2000, 04-11-00)

Cross reference--§27-141 (mobile homes to be taxed at same rate as real property, Code of Virginia, §58.1-3506.B.(iii)).

State Law References--Code of Virginia, §36-85.3, §58.1-3506.

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SECTION 27-43. EXEMPTIONS CERTAIN HOUSEHOLD GOODS AND PERSONAL EFFECTS.

- (a) There is hereby exempted from local taxation, pursuant to the Code of Virginia, §58.1-3504, the household goods and personal effects defined as separate items of taxation and classified as follows:
1. Bicycles.
 2. Household and kitchen furniture, including gold and silver plates, plated ware, watches and clocks, sewing machines, refrigerators, automatic refrigerating machinery of any type, vacuum cleaners and all other household machinery, books, firearms, and weapons of all kinds.
 3. Pianos, organs, and all other musical instruments; phonographs and record players, and records to be used therewith; and radio and television instruments and equipment.
 4. Oil paintings, pictures, statuary, curios, articles of virtue and works of art.
 5. Diamonds, cameos or other precious stones and all precious metals used as ornaments or jewelry.
 6. Sporting and photographic equipment.
 7. Clothing and objects of apparel.
 8. All other tangible personal property used by individuals or a family or household incident to maintaining an abode.
- (b) The classification above set forth shall apply only to such property owned and used by an individual or by a family or household incident to maintaining an abode. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-44. CERTAIN COMPUTER HARDWARE

- (a) Computer hardware used by a business primarily engaged in providing data processing services to other non-related or non-affiliated businesses is hereby designated as a separate class of personal property.
- (b) Computer hardware as defined in subsection (a) shall be valued on a percentage or percentages of the original cost of the hardware.

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- (c) A tax is hereby imposed on such computer hardware at the rate of one dollar and nine cents (\$1.09) per every one hundred dollars (\$100.00) of assessed value.
(Ord. No. 035-95, 9-12-95)

(Note: This ordinance effective 1 January 1996.)

State Law References--Code of Virginia §§58.1-3503A.16, 3506A.9, B

SECTIONS 27-45 - 27-49. RESERVED.

ARTICLE IV. MACHINERY AND TOOLS.

SECTION 27-50. MACHINERY AND TOOLS.

Upon all machinery and tools used in a business, as defined in Section 58.1-3507 of the Code of Virginia, there shall be a tax of one dollar and thirty cents (\$1.30) for every one hundred dollars (\$100.00) of the assessed value thereof for general city and school purposes.

All City taxes on machinery and tools for each year shall be due and payable during the year for which same are assessed as follows:

-Total amount in one installment on or before December Fifth.

All taxes annually imposed on machinery and tools shall be payable by the persons who on the first day of January in each and every year are the respective owners thereof.
(Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 016-93, 05-06-93; Ord. 011-96, 05-14-96; Ord. No. 016-2004, 4-28-04)

(Note: The effective date of this Ordinance shall be July 1, 2004.)

State Law References--Code of Virginia, §§58.1-3507, *et seq.*

SECTION 27-51. CERTIFIED POLLUTION EQUIPMENT AND CERTIFIED SOLAR ENERGY EQUIPMENT FACILITIES OR DEVICES AND CERTIFIED RECYCLING EQUIPMENT.

- (a) There is hereby exempted from local taxation certified pollution control equipment and facilities, pursuant to Section 58.1-3660 of the Code of Virginia.
- (b) There is hereby exempted from local taxation certified solar energy equipment facilities or devices and certified recycling equipment, facilities, or devices as defined in Virginia Code §58.1-3661 as amended from time to time. The

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procedures for applying for the exemption shall be those set out in the state code section.

- (c) It shall be the duty of any person applying for any exemptions provided for in this section to furnish the commissioner with proper state agency certification or other documentation required by law. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 034-95, 9-12-95) (This ordinance effective 1 January 1996.)

State Law References--Code of Virginia §§58.1-3660-58.1-3661.

SECTIONS 27-52 - 27-59. RESERVED.

ARTICLE V. UTILITY TAX

SECTION 27-60. DEFINITIONS.

The following words and phrases when used in this article shall for the purposes of this article have the following respective meanings, except where the context clearly indicates a different meaning.

- (a) **UTILITY SERVICES.** The phrase "utility services" shall include local exchange telephone service, local cellular mobile radio telecommunication service, electrical service, gas service and cable television service furnished within the corporate limits of the City of Winchester.
- (b) **PURCHASER.** The word "purchaser" shall include every person who purchases a utility service, and shall be deemed to include any consumer of such services, whether an individual, corporation, or other entity.
- (c) **SELLER.** The word "seller" shall include every person who sells or furnishes a utility service.
- (d) **RESIDENTIAL USER.** The term "residential user" shall mean the owner or tenant of private residential property who pays for utility service in or for said property, including, but not limited to, apartment houses and other multi-family dwellings.
- (e) **COMMERCIAL OR INDUSTRIAL USER.** The term "commercial or industrial user" shall mean the owner or tenant of property used for commercial, industrial, and all other nonresidential purposes, who pays for utility service for said property.

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- (f) **GROSS CHARGES.** The term “gross charges” means, subject to the exclusions of this section, the amount charged or paid for the taxable purchase of mobile local telecommunication services. However, “gross charges” shall not include the

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following:

1. Charges or amounts paid that vary based on the distance and/or elapsed transmission time of the communication that are separately stated on the consumer's bill or invoice.
 2. Charges or amounts paid for customer equipment, including such equipment that is leased or rented by the customer from any source, if such charges or amounts paid are separately identifiable from other amounts charged or paid for the provision of mobile local telecommunication services on the service provider's books and records.
 3. Charges or amounts paid for administrative services, including, without limitation, service connection and reconnection, late payments, and roamer daily surcharges.
 4. Charges or amounts paid for special features that are not subject to taxation under § 4251 of the Internal Revenue Code of 1986, as amended.
 5. Charges or amounts paid that are (i) the tax imposed by § 4251 of the Internal Revenue Code of 1986, as amended or (ii) any other tax or surcharge imposed by statute, ordinance or regulatory authority.
 6. Bad debts.
- (g) **LOCAL CELLULAR MOBILE RADIO TELECOMMUNICATIONS.** The phrase "local cellular mobile radio telecommunications" means any two-way mobile or portable local telecommunication service, including cellular mobile radio telecommunication service and specialized mobile radio.
- (h) **MOBILE LOCAL TELECOMMUNICATION SERVICE.** The phrase "Mobile local telecommunication service" means any two-way mobile or portable local telecommunication service, including cellular mobile radio telecommunication service and specialized mobile radio.
- (i) **MOBILE SERVICE CONSUMER.** The phrase "Mobile service consumer" means a person having a telephone number for mobile local telecommunication service who has made a taxable purchase of such service or on whose behalf another person has made a taxable purchase of such service.
- (j) **MOBILE SERVICE PROVIDER.** The phrase "Mobile service provider" means every person engaged in the business of selling mobile local telecommunication services to consumers.

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- (k) **KILOWATT HOURS (kWh).** The phrase “kilowatt hours (kWh)” means a quantity of electricity, measured in units of 1000 watt-hours. A watt-hour is 1 watt of electricity delivered for one hour.
- (l) **CCF.** The abbreviation “CCF” means the volume of natural gas at standard pressure and temperature in units of 100 cubic feet.
- (m) **MONTHLY.** The term “monthly” refers to the amount of gas or electricity actually delivered by a seller to a purchaser, or the amount actually charged by a provider for other covered services, during a calendar month. Bills shall also be considered monthly bills if submitted by a seller to a purchaser twelve (12) times per year covering approximately equal periods of time. To the extent that a seller measures, delivers, or bills for gas, electricity, or other taxable monthly service on a billing cycle other than “monthly”, as defined above, then the monthly charge or amount delivered for purposes of calculating the tax due for each month contained in the billing cycle shall be the whole charge or amount for the entire billing cycle, divided by the number of months contained in the billing cycle.

(Ord. of 6-10-69; Ord. No. 009-86, 6-10-86; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92, Ord. No. 017-93, 05-06-93; Ord. No. 005-96, 04-09-96; Ord No. 020-2000, 10-10-00)

(Note – The effective date of this Ordinance is January 1, 2001.)

SECTION 27-61. LEVY AND RATE.

- (a) **ELECTRIC UTILITY TAX.** There is hereby imposed and levied by the City of Winchester upon each and every purchaser of electric utility service a tax in the amount of \$0.012 on each kilowatt hour (kWh) delivered monthly to residential purchasers, not to exceed \$3.00 monthly, and \$0.011 on each kilowatt hour (kWh) delivered monthly to commercial or industrial purchasers, not to exceed a maximum of 10,700 kilowatt hours. In the case of any apartment house or other multi-family dwelling which is supplied electricity through one or more master meters, each dwelling unit shall be taxed at \$3.00 monthly, or at \$0.012 multiplied by the total number of kilowatt hours delivered to the master meter and divided by the total number of units served, whichever is less.
- (b) **NATURAL GAS UTILITY TAX.** There is hereby imposed and levied by the City of Winchester upon each and every purchaser of natural gas utility service a tax in the amount of \$0.22 on each CCF delivered monthly to residential purchasers, not to exceed \$3.00 monthly, and \$0.15 on each CCF delivered monthly to commercial or industrial purchasers, not to exceed a maximum of 800 CCF. In the case of any apartment house or other multi-family dwelling which is supplied natural gas

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through one or more master meters, each dwelling unit shall be taxed at \$3.00 monthly, or at \$0.22 multiplied by the total number of CCF delivered to the master meter and divided by the total number of units served, whichever is less.

- (c) TELEPHONE AND CABLE TELEVISION UTILITY TAX. There is hereby imposed and levied by the City of Winchester upon each and every purchaser of local exchange telephone and cable television utility services a tax in the amount of fifteen percent (15%) of the monthly charge for each such utility service, exclusive of any Federal tax thereon, the maximum such tax not to exceed fifteen percent (15%) of the first Seven Hundred Fifty Dollars (\$750.00) of any such monthly charge, exclusive of any Federal tax thereon. Provided, however, that whenever any monthly bill submitted by any seller for local exchange telephone and cable television utility service shall exceed fifteen dollars (\$15.00) for a residential user, there shall be no tax computed on the portion of each such bill in excess of fifteen (\$15.00). The charge for cable television service subject to this tax shall exclude any charge made for a remote control tuning devise.
- (d) LOCAL CELLULAR MOBILE RADIO TELECOMMUNICATION UTILITY TAX. There is hereby imposed a levy by the City of Winchester upon each and every local consumer of local cellular mobile radio telecommunications services a tax in the amount of ten percent (10%) of the gross charges for such local cellular service. Provided however, that in the case of any monthly bill submitted by a mobile service provider, there shall be no tax computed on the portion of each such bill in excess of thirty dollars (\$30.00).

(Ord. of 6-10-69; Ord. No. 009-86, 6-10-86; Ord. 044-88, 11-15-88; Ord. No. 012-91, 4-23-91; Ord. No. 017-92, 11-10-92; Ord. No. 017-93, 05-06-93; Ord. No. 005-96, 04-09-96; Ord. No. 020-2000, 10-10-00)

(Note – The effective date of this Ordinance is January 1, 2001)

State Law Reference-- Code of Virginia, §58.1-3812, §58.1-3814.

SECTION 27-62. COLLECTION.

It shall be the duty of every seller in acting as the tax collecting medium or agency for the City of Winchester to collect from the purchaser for the use of the City the tax hereby imposed and levied at the time of collecting the purchase price charged, and the taxes collected during each calendar month shall be reported by each seller to the commissioner and each seller shall remit the amount of tax shown by said report to have been collected to the treasurer on or before the last day of the first calendar month thereafter, together with the name and address of any purchaser who has refused to pay his tax. The required reports shall be in the form prescribed by the commissioner. The tax levied or imposed under this ordinance with respect to the purchase of any utility service shall become

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effective on charges first appearing on bills rendered on September 1, 1969, and thereafter. (Ord. of 6-10-69; Ord. No. 009-86, 6-10-86; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-63. RECORDS.

Each and every seller shall keep complete records showing all purchases in the City, which records shall show the price charged against each purchaser with respect to each purchase, the date thereof and the date of payment thereof and the amount of tax imposed hereunder, and such records shall be kept open for inspection by the duly authorized agents of the City at reasonable times, and the duly authorized agents of the City shall have the right, power and authority to make transcripts thereof. (Ord. of 6-10-69; Ord. No. 009-86, 6-10-86; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-64. EXEMPTIONS.

The United States of America, the Commonwealth of Virginia, and the political subdivisions, boards, commissions and authorities thereof, are hereby exempted from the payment of the tax imposed and levied by this ordinance with respect to the purchase of utility services used by such governmental agencies. (Ord. of 6-10-69; Ord. No. 009-86, 6-1-86; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-65. APPLICABILITY TO TELEPHONE CHARGES-EXCEPTIONS.

The tax hereby imposed and levied on purchases with respect to local exchange telephone service shall apply to all charges made for local exchange telephone service, except local messages which are paid for by inserting coins in coin-operated telephones. (Ord. of 6-10-69; Ord. No. 009-86, 6-10-86; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-66. BOTTLED GAS; EXCEPTIONS.

The tax hereby imposed and levied shall not apply to the purchase of bottled gas. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-67. RESERVED.

SECTION 27-68. VIOLATIONS.

Any purchaser failing, refusing, or neglecting to pay the tax hereby imposed or levied and seller violating the provisions hereof, and any officer, agent, or employee of any seller

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violating the provisions hereof shall, upon conviction, be subject to a fine of not more than twenty-five dollars (\$25.00). Each failure, refusal, neglect or violation and each day's continuance thereof, shall constitute a separate offense. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-69. RESERVED.

ARTICLE VI. MEALS TAX

SECTION 27-70. TAX ON MEALS PURCHASED FROM FOOD ESTABLISHMENTS.

There is hereby imposed and levied by the City of Winchester, Virginia, a tax, as more fully described hereafter in Section 27-72, on the amount paid for meals purchased from any food establishment, whether prepared in such food establishment or not, whether consumed on the premises or not. (Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 005-2001, 02-13-01)

State Law Reference-- Code of Virginia, §58.1-3840.

SECTION 27-71. DEFINITIONS.

For the purposes of this section, the following words or phrases shall have the meanings respectively ascribed to them by this article.

- (a) *CATERER* shall mean a person who furnishes meals on the premises of another for compensation.
- (b) *FOOD* shall mean all food, beverages, or both, including alcoholic beverages, purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not, and without regard to the manner, time, or place of service.
- (c) *FOOD ESTABLISHMENT* shall mean any place in or from which food or food products are prepared, packaged, sold, or distributed in the City of Winchester, including but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, convenience store, movie theater, delicatessen, confectionery, bakery, eating house, eatery, drugstore, ice cream/yogurt shop, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar, lounge, or other similar establishment, public or private, and shall include private property outside of and contiguous to a building or structure operated as a food establishment at which food or food products are sold for immediate consumption.
- (d) *MEAL* shall mean any prepared food and/or drink, including alcoholic beverages, offered or held out for sale by a food establishment for the purpose of being

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consumed by an individual or group of individuals at one time to satisfy the appetite, and which is ready for human consumption. All such food and/or drink shall be included, unless hereinafter specifically exempted, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, dinner, supper, or by some other name, and without regard to the manner, time or place of service. By way of illustration, and without limitation, the term "meal" shall include individual donuts or other pastries, individual fountain drinks, individual cold soft drinks, a salad or food bar in a food or other store, individual sandwiches, prepared pizzas or slices of pizza, and individual servings of potato chips or other snack foods.

- (e) *PURCHASER* shall mean any person who purchases a meal.
- (f) *SALE* shall mean the final sale to the ultimate consumer.
- (g) *SELLER* shall mean any restaurant or caterer selling meals, or the person operating such business. (Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 024-91, 6-11-91; Ord. No. 017-92, 11-10-92; Ord. No. 005-2001, 02-13-01)

SECTION 27-72. LEVY AND RATE.

In addition to all other taxes and fees of any kind now or hereafter imposed by law, there is hereby levied and imposed on the purchaser of every meal served, sold, or delivered in the City by a food establishment or a caterer a tax equivalent to five percent (5%) of the amount paid for the meal, whether consumed on the premises or not. There shall be no tax if the total amount paid is less than fifty cents (\$0.50); on larger amounts, the tax shall be computed at a straight five percent (5%), one-half cent (\$0.005) or more being treated as one cent (\$0.01).

This situs of taxation shall be the City, county or town in which sales are made, namely the locality in which each place of business is located without regard to the locality of delivery or possible use by the purchaser. (Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 013-91, 4-23-91; Ord. No. 017-92, 11-10-92; Ord. No. 005-2001, 02-13-01; Ord. No. 015-2004, 4-28-04)

(Note: The effective date of this Ordinance shall be July 1, 2004)

State Law Reference-- Code of Virginia, §58.1-3841.

SECTION 27-73. PAYMENT AND COLLECTION OF TAX.

In every case the tax shall be collected by the seller and paid by the purchaser at the time the charge for the meal becomes due and payable, whether payment is to be made in cash, check or on credit by means of a credit card or otherwise; provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the

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Department for the Visually Handicapped and located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such tax. The seller shall add the tax to the amount charged for the meal, and shall pay the taxes collected to the City as provided by Section 27-75. (Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 005-2001, 02-13-01)

SECTION 27-74. COLLECTION IN TRUST FOR THE CITY.

All amounts collected as taxes under this article shall be deemed to be held in trust by the seller collecting them, until remitted to the City as provided by Section 27-75. (Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-75. REPORTS AND REMITTANCES.

The commissioner may require all prospective sellers of meals licensed to do business in the City to register for collection of tax imposed by this article. Every seller shall make a report for each calendar month, showing the amount of charges collected for meals and the amount of tax required to be collected.

The monthly reports shall be made on forms prescribed by the commissioner and shall be signed by the seller. They shall be delivered to the commissioner on or before the twentieth (20th) day of the calendar month following the month being reported. Each report shall be accompanied by a remittance of the amount of tax due, made payable to the treasurer. The commissioner shall promptly transmit all taxes received to the treasurer.

(Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-76. PROCEDURE WHEN TAX NOT REPORTED OR COLLECTED.

If any person whose duty it is to do so shall fail or refuse to collect the tax imposed under this article, and make timely report and remittance thereof, or if the commissioner has reasonable cause to believe that an erroneous statement has been filed, the commissioner shall proceed in such manner as is practicable to obtain facts and information on which to base an estimate of the tax due the City, and in connection therewith shall make such investigations and take such testimony and other evidence as may be necessary; provided, however, that notice and opportunity to be heard be given any person who may become liable for the amount owing prior to any determination by the commissioner .

As soon as the commissioner has procured whatever facts and information may be obtainable upon which to base the assessment of any tax payable by any person who has failed to collect, report, or remit such tax, the commissioner shall proceed to determine and assess against such person the tax, penalty and interest provided in this chapter, and shall notify the person by certified or registered mail sent to his or her last known address of the amount of such tax, penalty, and interest. The total amount thereof shall be payable

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ten (10) days after the date such notice is sent. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-77. PRESERVATION OF RECORDS.

It shall be the duty of every person liable for the collection and remittance of the taxes imposed by this article to keep and preserve for a period of two years, records showing all purchases taxable under this article, the amount charged the purchaser for each purchase, the date thereof, the taxes collected thereon, and the amount of tax required to be collected by this article. The commissioner shall have the power to examine such records at reasonable times and without reasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this article and to make transcripts of all or any parts thereof. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-78. DUTY OF PERSON GOING OUT OF BUSINESS.

Whenever any person required to collect and remit to the City any tax imposed by this article, shall cease to operate or otherwise dispose of his or her business, the tax shall immediately become due and payable and the person shall immediately make a report and remittance thereof. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-79. ADVERTISING PAYMENT OR ABSORPTION OF TAX; PROHIBITED.

No seller shall advertise or hold out to the public in any manner, directly or indirectly, that all or any part of a tax imposed under this article, will be paid or absorbed by the seller or by anyone else, or that the seller or anyone else will relieve any purchaser of the payment of all or any part of the tax. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-80. TIPS AND SERVICE CHARGES.

Where a purchaser provides a tip for an employee of a seller, and the amount of the tip is wholly in the discretion of the purchaser, the tip is not subject to the tax imposed by this article, whether paid in cash to the employee or added to the bill and charged to the purchaser's account; provided, in the latter case, the full amount of the tip is turned over to the employee by the seller. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

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SECTION 27-81. EXEMPTIONS.

The following classes of meals shall not be subject to tax under this article.

- (a) Meals furnished by restaurants to employees as part of their compensation when no charge is made to the employee.
- (b) Meals sold by day care centers, public or private elementary or secondary schools, or food sold by any college or university to their students or employees.
- (c) Meals purchased by agencies of federal, state or local governments or by officers or employees thereof while on official business.
- (d) Meals furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm or handicapped, or homes for battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof.
- (e) Meals furnished by a non-profit charitable organization to elderly, infirm, blind, handicapped or needy persons in their homes or at central locations.
- (f) Meals furnished by a college fraternity or sorority to its members.
- (g) Meals sold by a non-profit educational, religious, charitable or benevolent organization on an occasional basis as a fundraising activity.
- (h) Meals or food sold from vending machines.
- (i) Any other sale of a meal which is exempt from taxation under the Virginia Retail Sales and Use Tax Act, or any administrative rule or regulation issued pursuant thereto.
- (j) Non-alcoholic beverages, popcorn, candy, and similar confections sold in theaters.
- (k) The following items shall not be subject to the tax created by this ordinance when served exclusively for off-premises consumption:
 - 1) Factory prepackaged candy, gum, nuts, and other items of essentially the same nature.
 - 2) Factory prepackaged donuts, ice cream, crackers, nabs, chips, cookies, and items of essentially the same nature.
 - 3) Food sold in bulk. For purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary, and usual portion sold for premises consumption (e.g., a whole cake, a gallon of ice cream); a

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bulk sale shall not include any food or beverage that is catered or delivered by a food establishment for off-premises consumption.

- 4) Alcoholic and non-alcoholic beverages sold in factory-sealed containers.
- 5) Any food or food product purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplement Food Program for Women, Infants, and Children.
- 6) Any food or food product purchased for home consumption as defined in the federal Food Stamp Act of 1977, 7 U.S.C., Section 2012, as amended, EXCEPT hot food or hot food products ready for immediate consumption. For the purposes of administering the tax levied hereunder, the following items, whether or not purchased for immediate consumption, are excluded from the said definition of food in the federal Food Stamp Act: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

- (l) A grocery store, supermarket, or convenience store shall not be subject to the tax created by this ordinance EXCEPT for any portion or section therein designated as a delicatessen or designated for the sale of prepared food and beverages.

(Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 005-2001, 02/13/2001)

SECTION 27-82. ENFORCEMENT.

- (a) It shall be the duty of the commissioner to ascertain the name of every person operating a restaurant in the City liable for the collection of the tax imposed by this article who fails, refuses, or neglects to collect such tax or to make the reports and remittance required by this article. The commissioner may have issued a summons for such person, and the summons may be served upon such person by any city police officer in the manner provided by law. One return of the original summons shall be made returnable to the General District Court for the City of Winchester.
- (b) In the event the purchaser of any meal refuses to pay the tax imposed by this article, the seller may call upon the police department for assistance and the investigating officer may, when probable cause exists, issue the purchaser a summons returnable to the General District Court as provided by law. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-83. VIOLATIONS.

Any person violating or failing to comply with any of the provisions of this article, shall, upon conviction thereof, be guilty of a Class 3 misdemeanor punishable as provided in

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Section 1-11 of this code. Convictions shall not relieve any person from the payment, collection, or remittance of the tax as provided in Article IX. Each violation or failure shall be a separate offense. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTIONS 27-84 - 27-89. RESERVED.

ARTICLE VII. MOTEL TAX FOR TRANSIENTS

SECTION 27-90. DEFINITIONS

For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them.

- (a) *MOTEL* shall mean any public or private hotel, inn, apartment hotel, hostelry, tourist home or house, motel, rooming house or other lodging place within the City of Winchester offering lodging for four (4) or more persons at any time, and the owner and operator thereof who, for compensation, furnishes lodging to any transients as hereinafter defined except those persons who are within the purview of the existing "boarding and lodging" house tax.
- (b) *ROOM RENTAL* shall mean the total charge made by any such motel for lodging and/or space furnished any such transient. If the charge made by such includes any charge for services or accommodations in addition to that of lodging, and/or use of space, then such portion of the total charge as represents only room and/or space rental shall be distinctly set out and billed to such transient by such motel as a separate item.
- (d) *TRANSIENT* shall mean any person who, for any period of not more than thirty consecutive days, either at his own expense or at the expense of another, obtains lodging or the use of any space in any motel as hereinabove defined, for which lodging or use of space, a charge is made. (Ord. No. 017-92, 11-10-92)

SECTION 27-91. LEVY AND RATE.

In addition to all other taxes of every kind now or hereafter imposed by law, there is hereby imposed and levied on each and every transient a tax equivalent to five percent (5%) of the total amount paid for room rental by or for such transient to any motel, with one-half cent (\$0.005) or more of tax being treated as one cent (\$0.01). (Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 014-91, 4-23-91; Ord. No. 017-92, 11-10-92; Ord. No. 014-2004, 4-28-04)
(Note: The effective date of this ordinance shall be July 1, 2004.)

State Law Reference--Code of Virginia, §58.1-3840.

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SECTION 27-92. EXEMPTIONS.

No tax shall be payable hereunder on room rental paid to any hospital, medical clinic, convalescent home, or home for the aged. (Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-93. COLLECTION.

Every person receiving any payment for room rental with respect to which a tax is levied under this article shall collect the amount of tax hereby imposed from the transient on whom the same is levied or from the person paying for such room rental at the time payment for such room rental is made, whether payment is made in cash, check or on credit by means of a credit card or otherwise. (Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-94. COLLECTIONS IN TRUST FOR THE CITY.

All amounts collected as taxes under this article shall be deemed to be held in trust by the seller collecting them until remitted to the City as provided by Section 27-95. (Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-95. REPORTS AND REMITTANCES.

Every person receiving payment for a room rental for which a tax is levied under this article shall make a report for each calendar month showing the amount of charges collected for room rental and the amount of tax required to be collected.

The monthly reports shall be made on forms prescribed by the commissioner and shall be signed by the seller. They shall be delivered to the commissioner on or before the twentieth (20th) day of the calendar month following the month being reported. Each report shall be accompanied by a remittance of the amount of tax due, made payable to the treasurer. The commissioner shall promptly transmit all taxes received to the treasurer.

(Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-96. COMMISSIONER OF THE REVENUE; OTHER POWERS AND DUTIES.

It shall be the duty of the commissioner to ascertain the name of every person operating a motel in the City liable for the collection of the tax levied in this article.

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The commissioner shall have the power to adopt rules and regulations not inconsistent with the provisions of this article for the purpose of carrying out and enforcing the payment, collection and remittance of the tax herein levied, and a copy of such rules and regulations shall be on file and available for public examination in the city manager's office. Failure or refusal to comply with any rules and regulations promulgated under this article shall be deemed a violation of this article. (Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-97. PROCEDURE WHEN TAX NOT REPORTED OR COLLECTED.

If any person whose duty it is to do so shall fail or refuse to collect the tax imposed under this article and to make a timely report and remittance thereof, or if the commissioner has reasonable cause to believe that an erroneous statement has been filed, the commissioner shall proceed in such manner as is practicable to obtain facts and information on which to base an estimate of the tax due the City, and in connection therewith shall make such investigations and take such testimony and other evidence as may be necessary; provided, however, that notice and opportunity to be heard be given any person who may become liable for the amount owing prior to any determination by the commissioner .

As soon as the commissioner has procured whatever facts and information may be obtainable upon which to base the assessment of any tax payable by any person who has failed to collect, report, or remit such tax, the commissioner shall proceed to determine and assess against such person the tax, penalty, and interest provided in this chapter, and shall notify the person by certified or registered mail sent to his or her last known address of the amount of such tax, penalty and interest. The total amount thereof shall be payable ten (10) days after the date such notice is sent. (Ord. No. 0-19-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-98. PRESERVATION OF RECORDS.

It shall be the duty of every person liable for collection and remittance of the taxes imposed by this article to keep and preserve, for a period of two (2) years, records showing all room rentals taxable under this article, the amount charged for each room rented, the date thereof, the taxes collected thereon, and the amount of tax required to be collected by this article.

The commissioner shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such person for the purpose of administering and enforcing the provisions of this article and to make transcripts of all or any parts thereof. (Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

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SECTION 27-99. DUTY OF PERSON GOING OUT OF BUSINESS.

Whenever any person required to collect and remit to the City any tax imposed by this article shall cease to operate or otherwise dispose of his or her business, the tax shall immediately become due and payable and the person shall immediately make report and remittance thereof. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-100. ENFORCEMENT.

- (a) It shall be the duty of the commissioner to ascertain the name of every person operating a motel in the City liable for the collection of the tax imposed by this article who fails, refuses, or neglects to collect such tax or to make the reports and remittances required by this article. The commissioner may have issued a summons for such person, and the summons may be served upon such person by any city police officer in the manner provided by law. One return of the original summons shall be made returnable to the General District Court for the City as provided by law.
- (b) In the event any person who has rented a room refuses to pay the tax imposed by this article, the motel employee on duty may call upon the police department for assistance and the investigating officer may, when probable cause exists, issue the person who has rented the room a summons returnable to the General District Court of the City as provided by law. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-101. VIOLATIONS.

Any person violating or failing to comply with any of the provisions of this article shall, upon conviction thereof, be guilty of a Class 3 misdemeanor. Conviction shall not relieve any person from the payment, collection, or remittance of the tax, penalties and interest as provided in this chapter. Each violation or failure shall be a separate offense. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTIONS 27-102 - 27-109. RESERVED.

ARTICLE VIII. E-911 TAX

SECTION 27-110. DEFINITIONS.

For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them:

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- (a) *E-911 SYSTEM.* A telephone service which utilizes a computerized system to automatically route emergency telephone calls placed by dialing the digits 911 to the proper public safety answering point serving the jurisdiction from which emergency telephone call was placed. An E-911 system includes selective routing of telephone calls, automatic telephone number identification, and automatic location identification performed by computers and other ancillary control center communications equipment.
- (b) *PUBLIC SAFETY ANSWERING POINT.* A communications facility operated on a twenty-four (24) hour basis which first received E-911 calls from persons in a E-911 service area and which may, as appropriate, directly dispatch safety services or extend, transfer, or relay E-911 calls to appropriate public safety agencies.
- (c) *LOCAL EXCHANGE TELEPHONE SYSTEMS.* As applied to an E-911 system, switched local exchange access service.
- (d) *PURCHASER.* Every person who purchases a local exchange telephone service.
- (e) *SELLER.* Every person who sells or furnishes local exchange telephone service.
- (f) *UTILITY SERVICES.* Local exchange telephone service or local cellular mobile radio telecommunications furnished within the corporate limits of the City of Winchester.
- (g) *LOCAL CELLULAR MOBILE RADIO TELECOMMUNICATIONS.* Any two-way mobile or portable local telecommunication service, including cellular mobile radio telecommunication service and specialized mobile radio.
- (h) *MOBILE SERVICE PROVIDER.* Every person engaged in the business of selling mobile local telecommunication services to consumers. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92, Ord. No. 004-96, 04-09-96)

(Note: This ordinance effective 1 June 1996.)

SECTION 27-111. AMOUNT OF TAX ON TELEPHONE SERVICE.

A tax in the amount of two dollars forty-five cents (\$2.45) per telephone line per month is hereby imposed and levied by the City of Winchester upon each purchaser of local exchange telephone service. This tax shall be paid by the purchaser to the seller of local exchange telephone service and shall, after collection, be forwarded to the treasurer and used to pay the initial capital, installation and maintenance costs and recurring maintenance costs of the City's E-911 emergency telephone system. The taxes may also be used to offset the recurring maintenance, repair, and system upgrade costs, and

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salaries, or a portion of the salaries, of dispatchers paid by the City directly attributable to the E-911 program. (Ord. No. 044-88, 11-15-88; Ord. No. 029-89, 10-10-89; Ord. No. 012-92, 8-11-92; Ord. No. 017-92, 11-10-92; Ord. No. 028-93, 10-12-93; Ord. No. 004-96, 04-09-96; Ord. No. 015-99, 07-13-99; Ord No. 010-2000, 05-09-00)

(Note: This effective date of this ordinance is October 1, 2000.)

State Law Reference--Code of Virginia, §58.1-3813.

SECTION 27-112. EXEMPTIONS.

The following entities and persons shall be exempt from the payment of the tax imposed by this article:

- (a) The United States of America, the Commonwealth of Virginia, and all political subdivisions, boards, agencies, commissions, and authorities of the state.
- (b) Purchasers or lessees of local exchange telephone service who utilize coin-operated telephones. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)
- (c) Purchasers of local cellular mobile radio telecommunications services and local cellular mobile service providers. (Ord. No. 015-99 of 07-13-99)

SECTION 27-113. COLLECTION AND REMITTANCE BY SELLER.

It shall be the duty of every seller in acting as the tax collection agency for the City to collect from the purchaser for the use of the City, the tax hereby imposed and levied at the time of collecting the purchase price charged, and the tax imposed, levied, and collected during each calendar month shall be reported and paid by each seller to the treasurer on or before the fifteenth (15th) day of the second calendar month thereafter, together with the name and address of any purchaser who has refused to pay this tax. The required report shall be in a form approved by the commissioner. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-114. RECORDS OF SELLER.

Each seller shall keep complete records showing all purchases in the City and the price charged each purchaser with respect to each purchase, the date of purchase, date of payment, and the amount of tax imposed by this article. Such records shall be available for inspection by duly authorized representatives of the City of Winchester, and the City shall have the right to make any desired photocopies of the aforesaid records. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

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SECTION 27-115. EFFECTIVE DATE.

This article shall become effective sixty (60) days following written notice by certified mail to the registered agent of C & P Telephone Company, its successors and/or assigns. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTIONS 27-116 - 27-119. RESERVED.

ARTICLE IX. GENERAL RETAIL SALES TAX.

SECTION 27-120. LEVY.

There is hereby levied and imposed a general retail sales tax and a use tax at the rate of one per cent (1%) to provide revenue for the general fund. The rate of each tax shall be added to the rate of the state retail sales tax or use tax imposed by Title 58.1 of the Code of Virginia, (Virginia Retail Sales and Use Tax) and shall be subject to all the provisions of said chapter and all amendments thereof, and the rules and regulations published with respect thereto except that the applicable bracket of prices shall be as prescribed in Sections 58.1-627 and 58.1-628 of the Code of Virginia, for the combined tax, and except that no discount under Section 58.1-622 of the Code of Virginia, shall be allowed on the tax levied by this ordinance. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

State Law Reference--Code of Virginia, §58.1-605.

SECTIONS 27-121 - 27-129. RESERVED.

ARTICLE X. TAX ON PROBATE OF WILLS AND GRANTS OF ADMINISTRATION

SECTION 27-130. LEVY; RATE OF TAX.

A tax is hereby imposed on the probate of every will or grant of administration in the office of the clerk of circuit court for the City of Winchester not exempt by law. The tax

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shall be based on the value of the estate as determined in Section 27-131. The tax shall be Thirty-three cents (33¢) when the value of the estate does not exceed One thousand Dollars (\$1,000.00). For every additional One Thousand Dollars (\$1,000.00), an additional tax of Thirty-three cents (33¢) is imposed. The tax imposed by this section shall not apply to decedents' estates of Five Thousand Dollars (\$5,000.00) or less in value. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 028-96, 11-12-96)

State Law Reference--Code of Virginia, §§58.1-3805, 58.1-1712.

SECTION 27-131. VALUE OF THE ESTATE; TIME OF VALUATION.

- (a) The tax imposed by this article shall be based upon the value of all property, real and personal, within the jurisdiction of the Commonwealth which shall pass from the decedent to each beneficiary by will or intestacy. The value of all real estate shall be included although the real estate does not come into control or possession of the personal representative for estate administration purposes, and whether or not the personal representative under will is charged with any duty with respect to such real estate. However, in no event shall the value of real estate owned by the decedent and situated outside the Commonwealth be considered in computing the value of the estate.
- (b) The value of the estate shall be determined at the time of death of the decedent or, if an alternate time of valuation has been chosen under Section 2032 of the Internal Revenue Code for purposes of federal taxation, at such time. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

State Law Reference--Code of Virginia, §58.1-1713.

SECTION 27-132. FILING OF RETURN.

When the value of an estate exceeds One Thousand Dollars (\$1,000.00), a return shall be made and filed with the clerk of court at the time the will is offered for probate or the grant of administration is sought in such court. Such return shall state, to the best knowledge and belief of the persons submitting the will for probate or requesting the grant of administration:

- (i) The value of the decedent's real estate as set forth in Section 27-131 based on the actual value, if known, or if actual value is not known, the appraised value of such property for local real estate tax purposes; and
- (ii) The estimated value of the decedent's personal property as of the date of the decedent's death.

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Such return shall be subject to the provisions and penalties of Subsection 58.1-11 of the Code of Virginia, and the information set forth therein shall be entitled to the privilege and subject to the penalties for violation accorded by Subsection 58.1-3 of the Code of Virginia. For the purposes of Subsection 58.1-3, the information set forth in such return shall not be deemed to be required by law to be entered on any public assessment roll or book. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-133. PAYMENT OF TAX PREREQUISITE TO QUALIFICATION.

No one shall be permitted to qualify and act as executor or administrator until the tax imposed by Section 27-130 has been paid. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

State Law Reference--Code of Virginia, §58.1-1715.

SECTION 27-134. ESTATES COMMITTED TO COURT-APPOINTED ADMINISTRATORS

When an estate is committed by order of the circuit court for the City, or clerk thereof, to any person on the motion of a creditor or other person pursuant to Subsection 64.1-131 of the Code of Virginia, the tax due under this article for such administration shall be paid by the party upon whose motion the estate was committed. The amount of the tax paid by such creditor or other person shall be repaid to him by the administrator so appointed out of the first funds received by him from the sale of such estate. If an estate is committed to a person without motion, the person shall be required to pay such tax as soon as assets of the estate sufficient to cover the tax due have come into his hands. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-135. UNDEREVALUATION OF ESTATE; COLLECTION OF ADDITIONAL TAX; MINIMUM ADDITIONAL TAX OR REFUND PAYABLE.

The clerk of the circuit court, following payment of the tax on the probate or administration of the estate, shall thereafter compare the total value probate estate as shown on the probate tax return with the total value shown on the inventory of such estate to determine whether the estate has been undervalued for tax purposes. If the clerk finds that such estate has been undervalued, he shall thereupon collect such additional tax as

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may be due. In the event of an overpayment of such tax, the personal representative may apply to the treasurer for a refund. No additional tax shall be payable or no refund made if the payment or refund due would be less than five dollars (\$5.00). (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

State Law Reference--Code of Virginia, §58.1-1717.

SECTIONS 27-136 - 27-139. RESERVED.

ARTICLE XI. RECORDATION TAX.

SECTION 27-140. RECORDATION TAX - IMPOSITION.

The is hereby imposed a City recordation tax in an amount equal to one-third the amount of the state recordation tax collectible for the state on the first recordation of each taxable instrument as provided for Chapter 8, Title 58.1 of the Code of Virginia; provided however, that no tax shall be imposed under this section upon any instrument for which the state recordation tax is fifty cents (50c) specifically; and provided further, that where a deed or other instrument conveys, covers, or relates to property located partially in the City, the tax imposed under the authority of this section shall be computed only with respect to that portion of the property located in the City. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

State Law References--Code of Virginia, §58.1-3800, §58.1-3801.

SECTION 27-141. DUTY AND COMPENSATION OF CLERK OF CIRCUIT COURT OF THE CITY

The clerk of the circuit court of the City collecting the tax imposed under section 27-140 shall pay the same into the treasury of the City. For his service in collecting the tax imposed by section 27-140, the clerk shall be compensated out of the treasury of the City in the amount of five percent (5%) of the amount so collected and paid over. Such compensation shall be paid out of the city treasury. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3803.

SECTIONS 27-142 - 27-149. RESERVED.

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ARTICLE XII. DAILY RENTAL TAX

SECTION 27-150. DAILY RENTAL TAX - LEVY AND AMOUNT.

Beginning with the effective date of this ordinance, and for every tax year thereafter, there is hereby levied and imposed on the gross proceeds of every person engaged in the short-term rental business a tax of one percent (1%) of such gross proceeds. Such tax shall be in addition to the tax levied pursuant to Section 58.1-605 of the Code of Virginia. (Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92)

State Law Reference--Code of Virginia, §58.1-3510.1.A.

SECTION 27-151. DEFINITIONS.

- (a) *GROSS PROCEEDS*. For the purposes of this article, "gross proceeds" means the total amount charged to each person for the rental of daily rental property, excluding any state and local sales tax paid pursuant to the Virginia Retail Sales and Use Tax Act.
- (b) *DAILY RENTAL PROPERTY*. For purposes of this article, "daily rental property" means all tangible personal property held for rental by a person engaged in the short-term rental business, except trailers as defined in Section 46.2-100 of the Code of Virginia, and other tangible personal property required to be licensed or registered with the Department of Motor Vehicles, Department of Game and Inland Fisheries, or the Department of Aviation.
- (c) *SHORT-TERM RENTAL BUSINESS*. A "short-term rental business" is defined as a business in which not less than eighty percent (80%) of the gross rental receipts of such business in any year are from transactions involving rental periods of ninety-two (92) consecutive days or less, including all extensions and renewals to the same person or a person affiliated with the lessor.

"Affiliated" for purposes of this section shall mean any common ownership interest in excess of five percent (5 %) of any officers or partners in common with the lessor and lessee. For purposes of this test, (i) any rental to a person affiliated with the lessor shall be treated as rental receipts but shall not qualify for purposes of the eighty percent (80%) requirement, and (ii) any rental of personal property which also involves the provision of

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personal services for the operation of the personal property rented shall not be treated as gross receipts from rental. For purposes of this section, the delivery and installation of tangible personal property shall not mean operation. (Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92)

State Law References--Code of Virginia, §58.1-3510.1.A., §58.1-3510.B., §58.1-3510.C.

SECTION 27-152. SHORT-TERM RENTAL BUSINESS APPLICATION.

Each person engaging in the business of short-term rental as defined in Section 27-151(c) of this ordinance shall file annually an application for a Certificate of Registration with the commissioner for each place of business in the City from which short-term rental business will be conducted by the applicant. Such application shall be filed within thirty (30) days of the effective date of this ordinance. Subsequent application shall be filed by December 1 of the year preceding the tax year, or, for a new business, within thirty (30) days of the beginning of the operations of a short-term rental business. The application shall be on a form prescribed by the commissioner and shall set forth the name under which the applicant intends to operate the rental business, the location, and such other information as the commissioner may require.

The owner of the short-term rental business shall sign the application. (Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92; Ord. No. 009-2000, 04-11-00)

State Law Reference--Code of Virginia, §58.1-3510.2.

SECTION 27-153. CERTIFICATE OF REGISTRATION.

Upon approval of the application by the commissioner, a Certificate of Registration shall be issued. This Certificate shall be conspicuously displayed at all times at the place of business for which it is issued.

The Certificate is not assignable and shall be valid only for the person in whose name it is issued and the place of business designated. (Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3510.2.

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SECTION 27-154. COLLECTION, RETURN. AND REMITTANCE OF TAX.

Every person engaged in the short-term rental business as defined in Sec. 27-151 shall collect a daily rental property tax from the lessee of the daily rental property not later than at the end of the term of the rental. The lessor of the daily rental property shall transmit a quarterly return to the commissioner , indicating the gross proceeds derived from the short-term rental business and shall remit therewith the payment of such tax as is due for that quarter. The quarterly returns and payment of tax shall be filed with the commissioner on or before the 20th day of the month following the end of each quarter, representing the gross proceeds and taxes collected during the preceding quarter. The return shall be upon such forms and set forth such information as the commissioner may require, showing the amount of gross proceeds and the tax required to be collected. The taxes required to be collected under this article shall be deemed to be held in trust by the business required to collect such taxes until remitted as required in this article. (Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92)

State Law Reference--Code of Virginia, §58.1-3510.2.

SECTION 27-155. RECORDS.

- (a) The provisions of Sec. 27-9 of this chapter shall apply herein, *mutatis mutandis*, except that Sec. 27-9(b) shall not apply.
- (b) In addition to the information specified in subsection (a) of this section, every person engaged in a short-term rental business shall maintain a complete record of all exemptions from payment of this tax granted to renters of short-term rental property including:
 - 1. A copy of the Virginia Department of Taxation Tax Exemption Certificate; or
 - 2. A copy of the U.S. State Department Tax Exemption Certificate which U.S. State Department card must specify the renter by name as exempt from sales tax; or
 - 3. Other explanation and proof of claimant exemption.

(Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-156. PROCEDURE UPON FAILURE TO FILE RETURN.

If any person, whose duty it is so to do, shall fail or refuse to file within the time provided in this article, the returns required in this article, the commissioner shall proceed in such manner as he may deem best to obtain facts and information on which to

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base his estimate of the tax due. As soon as the commissioner shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to make such return he shall proceed to determine and assess against such person the tax, penalty and interest provided for by this chapter and shall notify such person by registered mail, sent to his last known place of business, of the total amount of such tax, penalty and interest and the total amount thereof shall be payable within ten (10) days from the date of such notice. In the event such tax is not paid within ten (10) days from the date of the notice, the commissioner shall proceed to collect same in accordance with Chapter 39 of Title 58.1 of the Code of Virginia. (Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-157. EXEMPTIONS; PENALTIES.

Provisions in §58.1-608 of Chapter 6 of the Code of Virginia, relating to exemptions, Code of Virginia, §§58.1-635 and 58.1-636 relating to penalties, and the Code of Virginia, §58.1-625 relating to the manner of collecting the local retail sales and use tax applicable in Chapter 6 (§58.1-600, *et seq.*) of Title 58.1 of the Code of Virginia, shall apply *mutatis mutandis* to the daily rental tax, except that the commissioner shall assess the tax due, and the treasurer shall collect the daily rental tax, instead of the Department of Taxation.

(Ord. No. 017-92, 11-10-92)

State Law Reference--Code of Virginia, §58.1-3510.3.

SECTION 27-158. UNCERTIFIED RENTERS PROHIBITED FROM COLLECTING TAX.

No person renting any property or service to any other person shall collect from the lessee the daily rental property tax authorized by this article unless he has a valid Certificate of Registration issued for the current year by the commissioner. Any payments collected in a manner not authorized by law shall be refunded to such lessees as can be identified with the remainder forfeited to the City. (Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-159. FAILURE TO FILE RETURN; FRAUDULENT RETURN; CIVIL PENALTIES.

- (a) When any person fails to make any return and pay the full amount of the tax required by this article, there shall be imposed, in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of six percent (6%) if the failure is for not more than one month, with an additional six percent (6%) for each additional month, or fraction thereof, during which the failure continues, not to exceed thirty percent (30%) in the aggregate. In no case,

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however, shall the penalty be less than ten dollars (\$10.00) and such minimum penalty shall apply whether or not any tax is due for the period for which such return was required. If such failure is due to providential or other good cause shown to the satisfaction of the commissioner, such return with or without remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return where willful intent exists to defraud the City of any tax due under this article, or in the case of a willful failure to file a return with the intent to defraud the City of any such tax, a specific penalty of fifty percent (50%) of the amount of the proper tax shall be assessed. All penalties and interest imposed by this chapter shall be payable by the person and collectible by the commissioner in the same manner as if they were a part of the tax imposed.

- (b) It shall be prima facie evidence of intent to defraud the City of any tax due under this chapter when any person reports his gross proceeds at fifty percent (50%) or less of the actual amount.
- (c) Interest at a rate determined in accordance with the Code of Virginia, §58.1-15, shall accrue on the tax until the same is paid, or until an assessment is made, pursuant to the Code of Virginia, §58.1-15, after which interest shall accrue as provided therein. (Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-635.

SECTION 27-160. PENALTY FOR FAILURE TO FILE RETURN OR MAKING FALSE RETURN.

Any person subject to the provisions of this article failing or refusing to file a return herein required to be made, or failing or refusing to file a supplemental return or other data required by the commissioner, or who makes a false or fraudulent return with intent to evade the tax hereby levied, or who makes a false or fraudulent claim for refund, or who gives or knowingly receives a false or fraudulent exemption certificate, or who violates any other provision of this article, punishment for which is not otherwise herein provided, shall be guilty of a Class 1 misdemeanor. (Ord. No. 017-92, 11-10-92)

This ordinance will be effective as of June 1, 1991.

SECTIONS 27-161 - 27-169. RESERVED.

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ARTICLE XIII. CIGARETTE TAX

SECTION 27-170. DEFINITIONS.

- (a) *GENERALLY.* Certain words and phrases, when used in this article, shall, for the purposes of this article, have the meanings ascribed to them by this section, except where the context clearly indicates a different meaning.
- (b) *CARTON.* Any container, regardless of material used in its construction, in which ten (10) packages of cigarettes are placed.
- (c) *CIGARETTE.* Any roll of any size or shape for smoking, whether filtered or unfiltered, with or without a mouthpiece, made wholly or partly of cut, shredded or crimped tobacco or other plant or substitute for tobacco, whether the same is flavored, adulterated or mixed with another ingredient, if the wrapper or cover is made of any material other than leaf tobacco or homogenized leaf tobacco, regardless of whether the roll is labeled or sold as a cigarette or by any other name.
- (d) *CITY.* Winchester, Virginia.
- (e) *DEALER.* Every manufacturer, manufacturer's representative, self-wholesaler, wholesaler, retailer, vending machine operator, public warehouseman or other person who shall sell, receive, store, possess, distribute or transport cigarettes within or into the City.
- (f) *PACKAGE.* Any container, regardless of the material used in its construction in which separate cigarettes are placed without such cigarettes being placed into any container within the package. Packages are those containers of cigarettes from which individual cigarettes are ordinarily taken when they are consumed by their ultimate user.
- (g) *PURCHASER.* Means every person to whom title to any cigarettes is transferred by a seller within the corporate limits of the City.
- (h) *SALE.* Means every act or transaction, irrespective of the method or means employed, including the use of vending machines and other mechanical devices, whereby title to any cigarettes shall be transferred from the seller to any other person within the corporate limits of the City.
- (i) *SELLER.* Means every person who transfers title to any cigarettes, or in whose place of business title to any cigarettes is transferred, within the corporate limits of the City, for any purpose other than resale. The term shall be synonymous with the term Retail Dealer.

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- (j) *STAMP*. Means a small heat set of paper or decalcomania to be sold by the treasurer or as authorized by the commissioner and to be affixed to every package of cigarettes sold to retail in the City. (Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

State Law References--Authority of city to levy cigarette tax and permitted provision of ordinance providing for administration and enforcement of such tax, Code of Virginia, §§ 58.1-3830, 58.1-3832, 58.1-3840; City Charter §1.01.

SECTION 27-171. LEVIED; AMOUNT; TAX ADDITIONAL TO OTHER TAXES.

- (a) In addition to all other taxes of every kind now or hereafter imposed by law, there is hereby levied and imposed by the City upon every person who sells or uses cigarettes within the City, from and after the effective date of the ordinance from which this section is derived, an excise tax equivalent to ten cents (\$0.10) per each package containing twenty five (25) or fewer cigarettes. The tax shall be paid and collected in the manner and at the time hereinafter prescribed; provided, that the tax payable for each cigarette or cigarette package sold or used within the City shall be paid but once. The tax hereby levied shall not apply to free distribution of sample cigarettes in packages containing five (5) or fewer cigarettes.
- (b) The tax levied and imposed by this article shall be in addition to all other taxes of every kind levied and imposed by any other ordinance or law. (Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

SECTION 27-172. METHODS OF COLLECTION.

- (a) The tax imposed by this article shall be evidenced by the use of a stamp and shall be paid by each dealer or other person liable for the tax at the time the stamps are purchased from the treasurer. The stamps shall be affixed in such a manner that their removal will require continued application of water or steam. Each dealer or other person liable for the tax is hereby required, and it shall be his duty, to collect and pay the tax.
- (b) It shall be the duty of each dealer or other person liable for the tax to report monthly to the commissioner separately the following information:
1. The quantity of stamped cigarettes sold or delivered during the period requested by the commissioner to:
 - (a) each dealer,
 - (b) each seller and,
 - (c) each separate person or place of business within the City.

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2. The quantity of stamps on hand, both affixed and unaffixed on the first day of the period of request and the quantity of stamps or stamped cigarettes received during the period,
 3. Such further information as the commissioner may require for the proper administration and enforcement of this article for the determination of the exact number of cigarettes in the possession of each dealer or user.
- (c) The commissioner is authorized to enter into an arrangement with the Virginia Department of Taxation to allow a dealer who is a tobacco wholesaler to use a dual die or stamp to evidence the payment of both the City and the state cigarette tax. The commissioner shall have the authority to determine the procedures by which such an arrangement may be agreed upon by the City and the Department of Taxation.
- (d) When, upon examination and audit of any invoices, records, books, canceled checks or other memoranda touching on the purchase, sale, receipt, storage or possession of tobacco products taxed herein, any dealer or other person liable for the tax is unable to furnish evidence to the commissioner of sufficient tax payments and stamp purchases to cover cigarettes which were sold, used, stored, received, purchased or possessed by him, the prima facie presumption shall arise that such cigarettes were received, sold, used, stored, purchased or possessed by him without the proper tax having been paid. The commissioner shall, from the results of such examination and audit based upon such direct or indirect information available, assess the tax due and unpaid.
- (e) The dealer or other person liable for the tax shall be notified by certified mail or hand delivery of such deficiency and such tax, penalty and interest assessed shall be due and payable within ten days after notice of such deficiency has been issued.
- (f) It shall be the duty of every dealer and seller in the City to maintain and keep, for a period of two (2) years, complete records of all cigarettes delivered or sold by such dealer or seller and to make all such records available for examination by the commissioner, upon demand, at any and all reasonable times. (Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

SECTION 27-173. PREPARATION AND SALE OF STAMPS GENERALLY; DISCOUNTS.

For the purpose of making stamps available for use, the commissioner shall prescribe, prepare, and furnish to the treasurer, and the treasurer shall sell, stamps of such denomination and in such quantities as may be necessary for the payment of the taxes imposed by this article. In the sale of such stamps, the treasurer shall allow a discount of

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five percent (5%) of the denominational or face value of the stamps to cover the costs incurred in affixing the stamps to packages of cigarettes. (Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

SECTION 27-174. NOTICE BY RETAIL DEALERS.

Retail dealers who shall sell, offer for sale, store, possess, distribute, purchase, receive or transport cigarettes in or into the City, shall notify the commissioner , in writing, upon request by the commissioner , of the supplier of such cigarettes and the name and address and the Virginia Retail Sales and Use Certificate of Registration number for each separate place of business. (Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

SECTION 27-175. DISPLAY OF STAMPS - SEIZURE.

- (a) Stamps shall be placed upon each package of cigarettes in such manner as to be readily visible to the purchaser.
- (b) Any seller found to possess any cigarettes without the tax paid stamp affixed who is not in the process of affixing such stamps thereto, shall be presumed to be in possession of untaxed cigarettes in violation of this article. If such person has received the cigarettes within the preceding forty-eight (48) hours, and has not offered them for sale, such presumption shall not apply.
- (c) Any cigarettes placed in any coin operated vending machine shall be presumed for sale within the City. Any vending machine located within the City containing cigarettes upon which the stamp has not been affixed or containing cigarettes placed so as to not allow visual inspection of the stamp through the viewing area as provided for by the vending machine manufacturer shall be presumed to contain untaxed cigarettes in violation of this article.
- (d) Any cigarettes, coin operated vending machines, counterfeit stamps, or other property found in violation of this article shall be declared contraband goods and may be seized by the commissioner . In addition to any tax due, the dealer or other person liable for the tax possessing such untaxed cigarettes shall be subject to civil and criminal penalties herein provided.
- (e) In lieu of seizure, the commissioner may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of such seal from a vending machine by any unauthorized person shall be a violation of this article. Nothing in this article shall prevent the seizure of any vending machine at any time after it is sealed.
- (f) All cigarette vending machines shall be plainly marked with the name, address and telephone number of owner of said machine.

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- (g) Any seized and confiscated cigarettes, vending machines or other property used in the furtherance of any illegal evasion of the tax may be disposed of by sale or other method deemed appropriate by the commissioner after thirty (30) days after notice to the person from whom the items were seized. No credit from any sale of cigarettes, vending machines or other property seized shall be allowed toward any tax, penalties or interest assessed. (Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

SECTION 27-176. REFUND FOR UNUSED OR DAMAGED STAMPS OR METER IMPRINTS.

- (a) Should any person, after acquiring from the treasurer any stamps provided for in this article, cease to be engaged in a business necessitating the use of the stamps, or should the stamps or meter imprints be damaged to the extent that they are unusable, such person shall be entitled to a refund of the denominational or face amount of any such stamps, less any discount, upon presenting the stamps to the commissioner and furnishing the commissioner with an affidavit showing, to his satisfaction, that the stamps were acquired by such person but not used, and the reason for requesting the refund.
- (b) Any and all refunds for unused or damaged stamps provided for under this section may be made on vouchers approved by the commissioner . Such refunds shall be charged against the sums collected for the sale of said stamps and for the use of such imprints. Payment to the person requesting the refund shall be made within twenty (20) days of the request. (Ord. No. 017-92, 11-10-92)

SECTION 27-177. RULES AND REGULATIONS.

The commissioner is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to the methods and means of cancellation of the stamps provided for in this article and to any and all other matters pertaining to the administration and enforcement of the provisions of this article. The commissioner is further authorized and empowered to examine the books, records, invoices, papers and any and all cigarettes in and upon any premises where the same are placed, stored, sold, offered for sale, or displayed for sale by a seller. The commissioner is authorized to delegate any of the powers and duties set out in this article to one or more deputies or assistants, except as may be prohibited by law. (Ord. No. 017-92, 11-10-92)

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SECTION 27-178. VIOLATIONS OF ARTICLE - GENERALLY.

- (a) Any person violating any of the provisions of this article shall be guilty of a Class 1 misdemeanor. Conviction and punishment for such violation shall not relieve any person from the payment of any tax imposed by this article. In addition, any person who shall perform any fraudulent act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article shall be required to pay a penalty in the amount of fifty (50) percent, and interest at the rate of ten percent (10%) per year upon any tax found to be overdue and unpaid.
- (b) Each day's violation of, or noncompliance with, any of the provisions of this article shall be and constitute a separate offense. (Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

SECTION 27-179. VIOLATIONS OF ARTICLE - PROHIBITED ACTS ENUMERATED.

- (a) It shall be unlawful and a violation of this article for any person:
 - 1. To perform any act or fail to perform any act for the purpose of evading he payment of any tax imposed by this article or of any part thereof, or for any dealer or seller, with intent to violate any provision of this article, to fail or refuse to perform any of the duties imposed upon him under the provisions of this article or to fail or refuse to obey any lawful order which the commissioner may issue under this article.
 - 2. To falsely or fraudulently make, forge, alter or counterfeit any stamp, invoice or reports, or the printed markings of any meter machine, to procure or cause to be made, forged, altered or counterfeited any such stamp or printed markings of a meter machine, or knowingly and willfully to alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps or printed markings or a meter machine.
 - 3. To sell any cigarettes upon which the tax imposed by this article has not been paid and upon which evidence of payment thereof is not shown on each package of cigarettes.
 - 4. To reuse or refill with cigarettes any package from which the cigarettes have been removed, for which the tax has been paid.
 - 5. To remove from any package any stamp or the printed markings of a meter machine with intent to use or cause the same to be used after the same have already been used, or to buy, sell or offer for sale or give away, any used, removed, altered or restored stamps or printed markings of a meter machine, to any person, or to reuse any stamp or printed markings of a meter machine which

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has theretofore been used for evidence of the payment of any tax prescribed by this article, or, except as to the treasurer, to sell or offer to sell any stamp or printed markings of a meter machine provided for herein.

6. To possess, store, use, authorize or approve the possession, storage or use for sale or resale of any cigarettes in quantities of more than sixty (60) packages upon which the stamp has not been affixed; or

7. To transport, authorize or approve the transportation of any cigarettes, in quantities of more than sixty packages into or within the City upon which the stamp has not been affixed, if they are:

(a) Not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and the consignee or purchaser and the brands and quantity of cigarettes transported; or

(b) Accompanied by a bill of lading or other document which is false or fraudulent in whole or part; or

(c) Accompanied by a bill of lading or other document indicating:

(i) A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such cigarettes on which the taxes imposed by such other jurisdiction have not been paid, unless the tax of the state or District of destination has been paid and the said cigarettes bear the tax stamps of that state or District; or

(ii) A consignee or purchaser in the Commonwealth of Virginia but outside the taxing jurisdiction who does not possess a Virginia Sales and Use Tax Certificate, a Virginia Retail Tobacco License and, where applicable, both a business license and a retail tobacco license issued by the local jurisdiction of destination.

(Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

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ARTICLE XIV. ADMISSIONS TAX

SECTION 27-180. DEFINITIONS.

The following words and phrases, when used in this article, shall, for the purposes of this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) *ADMISSION CHARGE*. "Admission charge" means the charge made for admission to any amusement or entertainment, exclusive of any federal tax thereon, including a charge made for season tickets.
- (b) *PLACE OF AMUSEMENT OR ENTERTAINMENT*. "Place of amusement or entertainment" means any place in the City wherein or whereat any of the following, or amusements or entertainment's similar to the following, are located, conducted, performed, exhibited and operated: Circuses, carnivals, menageries, amusement parks, moving picture shows, fairs, shows and exhibitions of all kinds; dances; basketball, football, wrestling, boxing and sports of all kinds; swimming pools, bowling alleys, roller rinks, golf courses, miniature golf, charter boats, drift boats, party boats, party boats solely operated within the corporate limits and within one mile into the adjacent waters, and other such things of a similar nature; concerts, theatrical, vaudeville, dramatic, operatic and musical performances and performances similar thereto; lectures, talks, literary readings, and performances similar thereto; such attractions as merry-go-rounds, Ferris wheels, roller coasters, leap-the-dips and the like, and all other public amusements, performances and exhibitions not specifically named herein; and any roof garden, cabaret or other similar place furnishing a public performance for profit, which shall include any room in any hotel, restaurant, hall or other public place where music and dancing privileges or any other entertainment is offered the patron in connection with serving or selling of food, refreshments or merchandise. A performance shall be regarded as being furnished for profit for purposes of this article even though the charge made for admission, refreshment service or merchandise is not increased by reason of the furnishing of such performance. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

State Law References--Admissions tax, Code of Virginia, §§ 58.1-3817, 58.1-3840.

SECTION 27-181. LEVIED; AMOUNT.

There is hereby imposed and levied a tax of five percent (5%) of the amount paid for admission to any place of amusement or entertainment, to be paid by every person who pays an admission charge to such place. Except as otherwise provided in Section 27-322, if any person is admitted free to any place of amusement or entertainment at any time when an admission charge is made to other persons, an equivalent tax is hereby levied

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and shall be collected based on the price charged to such other persons of the same class for the same or similar accommodations, such tax to be paid by the person so admitted. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-182. EXCEPTION FOR CERTAIN FREE ADMISSIONS.

No tax shall be payable under this article by the following, if admitted to any place of amusement or entertainment free:

- (a) Bona fide officers and employees of such place. The word "officers" shall include any director, if such place is operated by a corporation.
- (b) Any federal, state, city, county or city official or employee on official business.
- (c) Any person whose admission to such place is required for the performance of some duty to or work for the proprietor thereof.
- (d) Any newspaper reporter, photographer, telegrapher, radio announcer or person performing a similar vocation who is admitted for the performance of special duties in connection with any event and whose special duties are the sole reason for his presence.
- (e) Children twelve (12) years of age and under.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-183. EXCEPTION FOR CERTAIN EVENTS.

- (a) Notwithstanding any other section of this article, there shall be no tax payable on charges made for participating in participatory sports such as, but not limited to: Golf courses, tennis, bowling, swimming, and roller skating. However, admission charges for observing these sports shall be subject to the tax.
- (b) No tax shall be payable on charges for admissions to the following categories of events:
 - 1. Admissions charged for attendance at any event, the gross receipts of which go wholly to charitable purpose or purposes.
 - 2. Admissions charged for attendance at public and private elementary, secondary, and college school-sponsored events, including events sponsored by school-recognized student organizations.

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3. Admissions charged for entry into museums, botanical or similar gardens, and zoos.
4. Admissions charged for attendance at events sponsored by any governmental agency.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3817.

SECTION 27-184. EXCEPTION IF ADMISSION CHARGE IS TEN CENTS OR LESS.

Where the admission charge is ten cents (\$0.10) or less, no tax shall be payable under this article. Amounts paid for admission by season tickets or subscription shall be exempt only if the amount to be charged the holder or subscriber for a single admission is ten cents (\$0.10) or less. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-185. COLLECTION.

Every person receiving any payment for admission to any place of amusement or entertainment or for refreshments, service or merchandise on which a tax is levied under this article shall collect the amount of tax imposed by this article from the person making the payment, at the time of the payment of such admission or purchase, or from the person admitted free, at the time of such admission. If tickets or cards of admission are issued, the tax shall be collected at the time for the issuance of such tickets or cards. The taxes required to be collected under this section shall be deemed to be held in trust by the person required to collect the same until remitted as provided in this article. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-186. REPORTS AND REMITTANCES GENERALLY.

- (a) The person collecting any tax as provided in Section 27-185 shall make out a report, upon such forms and setting forth such information as the commissioner may prescribe or require, showing the amount of admission charges collected, exclusive of the federal tax thereon, and the tax from the admission or purchases for which he is liable, and shall sign and deliver such report to the commissioner with a remittance of such tax. Such reports and remittances shall be made on or before the twentieth day of each month covering the amount of tax collected during the preceding month.

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- (b) If the remittance under this section is by check or money order, such check or money order shall be payable to the treasurer. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-187. REPORTS, REMITTANCES AND DEPOSITS BY TEMPORARY OR TRANSIENT PLACES OF AMUSEMENT OR ENTERTAINMENT.

- (a) Whenever any place of amusement or entertainment of a temporary or transitory nature makes an admission charge which is subject to the tax levied by this article, or does not make such an admission charge but does sell refreshments, services or merchandise which is subject to the tax levied by this article, the commissioner may require the report and remittance of the requisite tax to be made on the day following the conclusion of a series of performances or exhibitions, or at such other reasonable time or times as he shall determine. Failure to comply with any such requirement of the commissioner as to the report and remittance of the tax so required shall be unlawful.
- (b) Before any temporary or transient place of amusement or entertainment mentioned in subsection (a) above shall begin operation and before any license shall be issued therefor, if a license is required, the person operating the same shall deposit with the treasurer a sum of money, to be determined by the treasurer, sufficient to cover the tax required to be collected by such person under the provisions of the article, as security for the collection and payment to the City of such tax. At the conclusion of such temporary or transient operation in the City, such person shall file with the commissioner the report required by this article and pay such tax collected to the City. Upon the filing of such report and the making of such payment, the treasurer shall refund such deposit. Should any such person fail to file such report and pay such amount of tax collected within five (5) days from the termination of the operation of such amusement or entertainment, the commissioner may thereupon assess such person with such tax at the amount of such deposit and the treasurer shall retain such deposit in full payment of the tax collected by and due the City by such person. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-188. COLLECTOR'S RECORDS.

It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this article to keep and to preserve, for a period of two (2) years, such suitable records as may be necessary to determine the amount of such tax he may have been responsible for collecting and paying to the City. The commissioner may inspect such records at all reasonable times. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

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SECTION 27-189. DUTY OF COLLECTOR GOING OUT OR DISPOSING OF BUSINESS.

Whenever any person required to collect and pay to the City a tax under this article shall quit business or otherwise dispose of his business, any tax payable under this article to the City shall become immediately due and payable and such person shall immediately make a report and pay the tax due. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-190. PROCEDURE UPON FAILURE TO COLLECT, REPORT, ETC., TAXES.

- (a) If any person, whose duty it is so to do, shall fail or refuse to collect the tax imposed under the article and to make, within the time provided in this article, any report and remittance required by this article, the commissioner shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the commissioner shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to collect such tax and to make such report and remittance, he shall proceed to determine and assess against such person the tax and penalties provided for by this article and shall notify such person, by registered mail, of the total amount of such tax and penalties and the total amount thereof shall be payable within ten (10) days from the date of such notice.
- (b) It shall be the duty of the commissioner to ascertain the name of every person operating a place of amusement or entertainment in the City, liable for the collection of the tax levied by this article, who fails, refuses or neglects to collect the tax or to make, within the time provided by this article, the reports or remittances required in this article. The commissioner may have a summons issued for such person in the manner provided by law and shall make one return of the original to the general district court of the City.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-191. VIOLATIONS OF ARTICLE.

Any person violating or failing to comply with any provision of this article shall be guilty of a Class 1 misdemeanor. Each such violation or failure to pay shall constitute a separate offense, but conviction thereof shall not relieve any person from the payment, collection or remittance of the taxes, penalties and interest provided for in this chapter. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

This ordinance will be effective as of June 1, 1991.

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ARTICLE XV. PUBLIC RIGHTS-OF-WAY USE FEE

SECTION 27-192. IMPOSITION OF RIGHTS-OF-WAY USE FEE.

There is hereby imposed within the city limits of the City of Winchester, Virginia, a “public rights-of-way use fee”, exactly as described in Section 56-468.1 of the Code of Virginia, 1950, as amended, which said Section is incorporated herein by reference.

SECTION 27-193. EFFECTIVE DATE; REPEAL OF PREVIOUS FRANCHISE.

The fee imposed by this Article shall become effective on and after July 1, 2001. On and after July 1, 2001, the provisions of this Article shall supercede and repeal those portions and provisions of all existing Ordinances and franchise agreements which impose franchise fees on any “certificated provider of telecommunications services”, as such term is defined by Section 56-468.1(A) of the Code of Virginia, 1950, as amended, but shall not alter, in any way, any and all other terms, requirements, and conditions of any such Ordinances or franchise agreements. (Ord. No. 006-2001, 3-13-01)

SECTIONS 27-194 - 27-199. RESERVED.

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